TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 14,528. 15

LIZZIE STEARNS BLEECKER AND ELSIE L. BLEECKER, PETITIONERS,

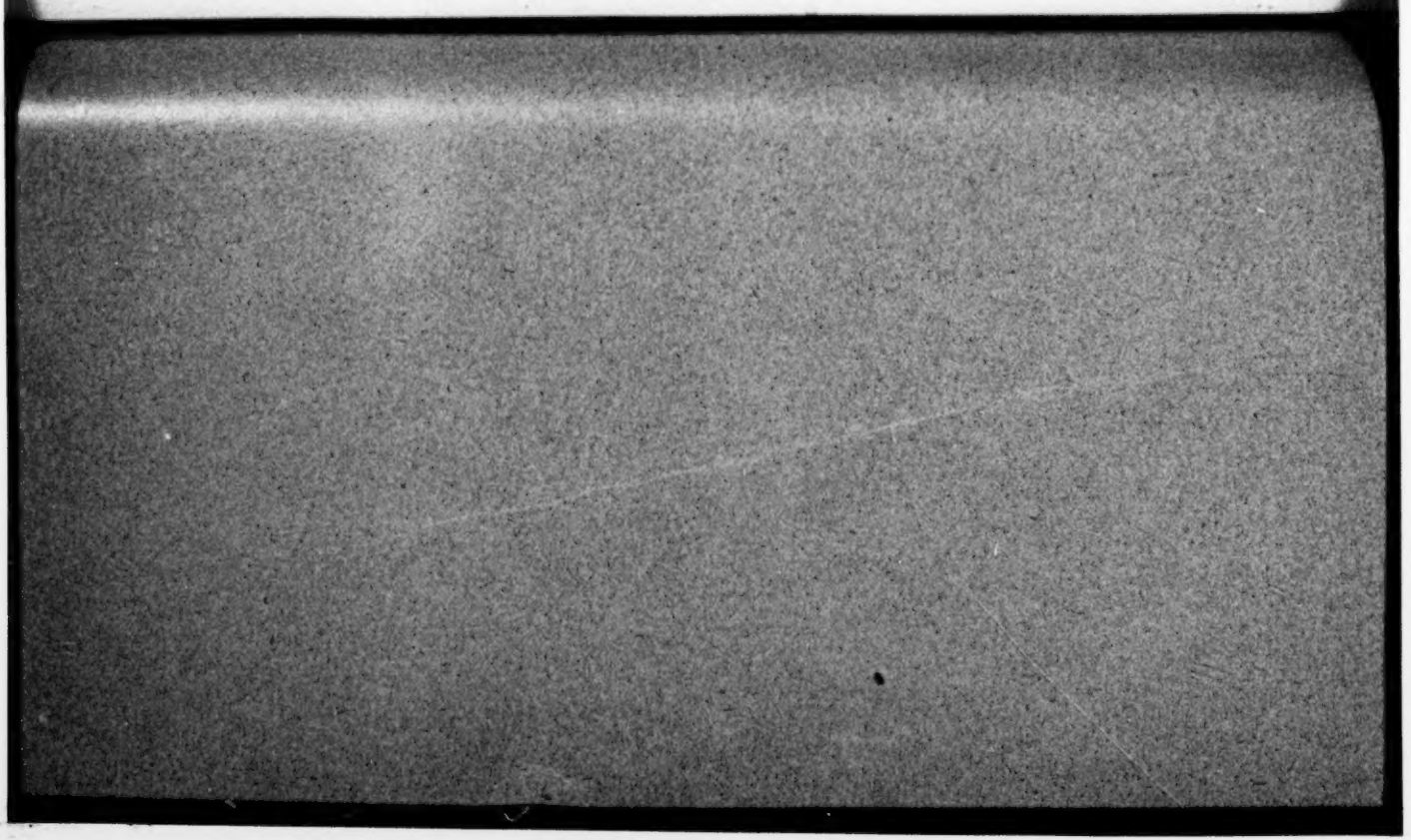
vs.

THE STEAMSHIP "KENSINGTON," HER ENGINES, &c., THE INTERNATIONAL NAVIGATION COMPANY, CLAIMANT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 5, 1899.
CERTIORARI AND RETURN FILED NOVEMBER 6, 1899.

(17,528.)



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U. S. District Court,

SOUTHERN DISTRICT OF NEW YORK.

LIZZIE S. BLEECKER *et al.*

AGAINST

The Steamship "KENSINGTON," her engines, tackle, &c.

2

STATEMENT.

1898.

Feb. 9. Libel filed.

Feb. 9. Monition issued returnable March 1, Steamship *Kensington* attached.

Feb. 10. Order entered releasing vessel from custody, Steamship released.

Feb. 24. Answer of International Navigation Company, claimant of S. S. *Kensington* filed. 3

June 8. Cause tried before the Honorable Addison Brown, U. S. District Judge.

July 6. Opinion, Brown, J. Decree for libellants for the equivalent of 250 francs each with interest and costs.

Oct. 10. Final decree entered.

Oct. 29. Notice of Appeal by libellant filed.

Nov. 1. Notice of Appeal by claimant filed.

4

5 DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER

AGAINST

6 The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The libel and complaint of Lizzie Stearns Bleecker and Elsie L. Bleecker, all of the State of New Jersey,
7 against the Steamship *Kensington*, her boilers, engines, tackles, apparel and furniture in a cause of action of contract, civil and maritime, of a nature hereinafter more specifically set forth, alleges as follows:

FIRST.—On information and belief that at all the times hereinafter mentioned the International Navigation Company was and still is a foreign corporation, duly organized and existing under the laws of the State of New Jersey, and at all said times carried on and
8 still carries on business as a common carrier, by water, of merchandise and passengers between the Port of New York in the United States of America and the Port of Antwerp in the Kingdom of Belgium, by various steamers, and among others the aforesaid steamship *Kensington*, owned or leased by them, known collectively as The International Navigation Company.

SECOND.—Heretofore, and on or about the 9th day of December, 1897, the said The International Navigation Company, entered into a contract with the

libellants, embraced in a passage ticket then duly de- 9
livered by them to said libellants and thereby, for a valuable consideration to them paid by the libellants, agreed to and with the libellants to carry and transport the libellants from the port of Antwerp in the Kingdom of Belgium to the port of New York in the United States of America by the said Steamship *Kensington*, and by said steamship to carry and transport with safety to said port of New York, and there deliver to the libellants, in good order and condition, the personal luggage or baggage of the libellants. 10

THIRD.—On or about the 11th day of December, 1897, the libellants took passage at Antwerp for New York upon said steamship *Kensington*, then lying at said Antwerp, bound for said port of New York, and in pursuance of the terms of the contract between them and on or about said day last mentioned delivered to the said The International Navigation Company, on board of said steamship at Antwerp, the wearing apparel and other personal luggage or baggage of 11
libellants, to be transported as aforesaid by said steamship to said port of New York, and there delivered to the libellants in good order and condition, and thereupon said steamship, her boilers, engines, tackle, apparel and furniture became charged for the faithful performance of said contract.

FOURTH.—Said steamship sailed from said port of Antwerp with libellants and their luggage or baggage on board on or about the 11th day of 12
December, 1897, for the port of New York, and where said steamship arrived in safety on or about the 23rd day of December, 1897, but owing to the careless, negligent, unusual, insufficient and improper manner in which the libellants' baggage was stored, and the careless, negligent and inefficient manner in which other merchandise on said steamship was stored, and the want of proper care on the part of the Master of said steamship, his officers and crew and persons employed by him or them, the said personal lug-

gage or baggage of libellants was in great part utterly ruined, whereby libellants were severally damaged in the sum of two thousand ($2,000) dollars.

FIFTH.—The said steamship is a foreign vessel and is about to leave the United States and the libellants will, after the said steamship has left the United States, be without remedy against said steamship, her boilers, engines, tackle, apparel and furniture.

SIXTH.—The said steamship is at present within the jurisdiction of the United States District Court for the Southern District of New York.

SEVENTH.—All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, the libellants pray that process in due form of law, according to the course of this Court in cases of admiralty and maritime jurisdiction may issue against said steamship *Kensington*, her boilers, engines, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid and this Honorable Court will be pleased to decree payment of the damages aforesaid with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

ROGER FOSTER,
Attorney and Proctor for Libellants,
35 Wall Street,
New York.

LIZZIE STEARNS BLEECKER.

Sworn to before me this 8th day of February, 1898.

CHARLES D. M. COLE,
Notary Public,
New Jersey,
Morris County.

[SEAL.]

[Endorsed :]—Libel.—February 9, 1898.

17

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

The answer of the International Navigation Company, claimant of the steamship *Kensington*, her boilers, etc., to the libel of Lizzie Stearns Bleecker and Elsie L. Bleecker against the said steamship, her boilers, etc. in a cause of contract civil and maritime, respectfully represents:

18

FIRST.—The claimant admits that it is a foreign corporation of the State of New Jersey carrying on business as a common carrier of merchandise and passengers between the port of New York and the port of Antwerp, Belgium, by various steamships, among others the steamship *Kensington* as stated in the first article of the libel.

SECOND.—The claimant admits that on or about December 9th, 1897, it entered into a contract with the libellants, expressed in a passage ticket, whereby for a valuable consideration it agreed to carry and transport them from the said port of Antwerp to the said port of New York by the said steamship *Kensington*, together with their personal luggage but it denies that it agreed to transport the said luggage with safety and to deliver it in good order and condition except so far as that duty is to be implied from its engagement in the said ticket contained, and in accordance with its provisions.

19

20

THIRD.—The claimant admits that on or about December 11th, 1897, the libellants took passage on the said steamship *Kensington* at Antwerp, and delivered to it on board of said steamship personal baggage to be transported to New York and there delivered to them, in accordance with the provisions of their ticket.

FOURTH.—The claimant admits that the said steamship sailed from Antwerp with the libellants and their baggage on or about December 11th, 1897, and arrived

21 at the port of New York on or about the 23rd day of December, 1897, and that the libellants' baggage was very greatly damaged: but denies that the same was damaged by reason of insufficient and improper stowage, and alleges on the contrary that the same was injuried by reason of the violence of the seas and the unusual extraordinary weather through which the said steamship *Kensington* passed.

FIFTH.—The claimant admits that the said steamship
22 is a foreign vessel and was about to leave the United States, as stated in the fifth article of the libel.

SIXTH.—The claimant admits that the said steamship was at the time the libel was filed within the jurisdiction of the United States and of this honorable Court, as stated in the sixth article of the libel.

SEVENTH.—The claimant admits the allegations contained in the seventh article of the libel except the statement that all and singular the premises are
23 true.

EIGHTH.—And for a separate and independent defence, the claimant alleges that it was part of the contract of transportation entered into between it and the libellants that all questions arising under the same should be settled according to Belgium law with reference to which the contract was made, and that the said contract contained a provision which is valid under the law of Belgium to the effect that the shipowner
24 should not be liable for loss or injury to the passenger or his baggage arising from perils of the seas, rivers or navigation, or from any act, neglect or default of the ship owner's servants.

NINTH.—And for a further, separate and partial defence, the claimant alleges that in and by the said contract of transportation between the libellants and itself it was provided that the shipowner should not, under any circumstances, be liable for any loss or injury to passengers' baggage beyond the sum of 250 francs, at

which such baggage is valued, unless a bill of lading 25
or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent. or its equivalent, and the claimant avers that no bill of lading or receipt was given or freight paid on any value in excess of the sum of 250 francs by the libellants or by either of them.

ROBINSON, BIDDLE & WARD,
Proctors for Claimant.

STATE OF NEW YORK, }
City and County of New York, } ss.: 26

JAMES A. WRIGHT being duly sworn, says, that he is the 2nd Vice-President and an officer of the International Navigation Company, the corporation defendant in the above entitled action. That the foregoing answer is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason why this verification is not made by the defendant is because the defendant is 27
a corporation, and the grounds of deponent's belief as to all matters in said answer, not stated upon his knowledge, are investigations which deponent has caused to be made concerning the subject matter of this action and information acquired by deponent in course of his duties as an officer of the corporation defendant in this action.

JAMES A. WRIGHT.

Sworn to before me this 24th }
day of February, 1898. } 28

A. LEO EVERETT,
[Seal] Notary Public,
N. Y.

[Endorsed:]—Answer.—Filed February 24, 1898.

29

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. S. BLEECKER *et al.*

vs.

The Steamship "KENSINGTON" *et al.*

Before Hon. Addison Brown, Judge.

30

NEW YORK, June 8, 1898.

Appearances:

ROGER FOSTER, Esq., for Libellants.

ROBINSON, BIDDLE & WARD, Esquires (Mr. Ward) for the Claimants.

MR. FOSTER: If your Honor please, I move to suppress a deposition that has come here from Antwerp, the deposition of Maurice de Cock. He was asked in
31 first cross-interrogatory: "Do you know of any provision or provisions in the statutes or Code of Belgium or any decision or decisions, or any opinion or opinions of a court of justice of Belgium which decides or decide, discusses or discuss, determines or determine, regulates or regulate, affects or affect the validity of, or recognize or recognizes the validity of such a contract as is referred to in the 6th Interrogatory, or such a contract as is referred to in the 8th Interrogatory, or such a contract as is referred to in the 9th Interrogatory at-
32 tached to the commission herein." His answer to that Interrogatory was: "I know of several decisions of our Courts which recognize the validity of such a contract as is referred to in the 6th Interrogatory."

In answer to the 2d cross-interrogatory he says: "I quote the decision of the Court of 'Cassation' rendered on the 12th day of November, 1895, of the 'Pasicrisie Belge' first section, edition of 1885, page 275; decision of the 14th day of February, 1895, found in the 'Pasicrisie Belge,' first section, edition of 1895, page 93;

decision of the Court of Appeals of Brussels, rendered 33
the 27th day of July, 1896, found in the volume entitled 'Jurisprudence du port d'Anvers,' published in 1897, page 35." The second cross-interrogatory asked him "to quote at length such statute or statutes," and so forth, and your Honor will perceive he merely cites them and does not quote them at all. I have made diligent search and am unable to find the authorities referred to and doubt their being in the United States.

Mr. Ward: Your Honor sees from the man's answer that he understood by "quote" the word "cite." 34
If my friend intends to stand on this I will ask permission to send this commission back and ask to have the citation quoted. This commission was executed before a United States consul.

Mr. Foster: I object to the postponement of the trial for this purpose.

The Court: I deny the motion to suppress the deposition, but I give leave to the libellants to call for a further answer to that question from the witness.

Mr. Ward: It is stipulated between counsel that 35
proctor for claimants shall send to the witness De Cock to return to him copies of the decisions, or so much thereof as applies to the questions referred to in the interrogatories, and his affidavit that the copies are correct, which proctor for libellant agrees to accept.

Mr. Foster: Provided that the same is filed in this Court on or before the first day of July, 1898, and that the consul certifies that the copies are correct.

Mr. Ward: I don't agree to that.

The Court: I cannot require any such thing. Or- 36
dinarily on a commission the consul would not be required to verify or certify anything beyond the oath of the witness.

Mr. Foster: I take an exception.

The Court: In denying the motion to suppress the deposition opportunity is given to the libellant to send the commission back for a further answer to the question by giving the language of the decision cited.

Mr. Foster: On account of the expense and delay

which would be necessitated the libellants will be unable to comply with the suggestion of the Court.

MR. WARD: I offer to send the commission back to Antwerp at the claimant's expense in the first instance to have the further answer made by the witness, the cost of the returning commission to be a cost in the case.

MR. FOSTER: I accept that, provided the trial can go on, reserving the right to have that deposition put in evidence subject to legal objections on or before July 1st next.

MR. WARD: I object to that. I don't think the case should be tried in such a way.

MR. FOSTER: I will accept that offer provided the case can go on, reserving the right to have that deposition put in evidence, subject to legal objection, on or before July 1st next, but since the libellants have come here from Massachussetts to try this case to day, and since a third witness has come here from Washington for the same purpose, I cannot consent to a postponement of the trial.

THE COURT: I understand the statement of libellants' counsel to be that he prefers to go on with the case now rather than to have the case reserved until the commission can be completed and the further answer can be obtained by claimants' counsel, as offered by him.

Mr. Foster here states the claims of the libel.

Mr. Ward states the claims of the answer.

LIZZIE S. BLEECKER, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Foster:

Q. Where do you live? A. My husband is in the navy. I live everywhere. Newport I hail from.

Q. But you have been spending the winter in New Jersey? A. In New Jersey and Massachusetts.

Q. When this libel was brought you lived in New

Jersey? A. In New Jersey, Morristown, New Jersey. 41

Q. You have lived there during the winter? A. From December 23d until April.

Q. Where were you during the year 1897 before December? A. We were in Paris, Antwerp, Genoa, Naples, Nice, London.

Q. Generally in Europe, principally in the south of France? A. The first part of the year we were in the south of France; after that we went to England, then came back to Antwerp. 42

Q. You went to Europe to join your husband? A. To join my husband.

Q. You are one of the libellants, and Miss Elsie L. Bleecker is the other libellant and your daughter? A. Yes, sir.

Q. When did you leave——

By the Court:

Q. She was with you in your travels? A. She was with me all the time. 43

By Mr. Foster:

Q. When did you and your daughter leave Paris for Antwerp on your return voyage? A. The 9th.

Q. Wasn't it the 8th? My memorandum says the 8th. A. Wednesday—was that the 8th or 9th!

Q. The 8th or 9th of December, 1897? A. Yes.

Q. Where did you buy your ticket for New York? A. In Paris. 44

Q. From the International Steamship Company?

By the Court:

Q. Did you have one or two tickets? A. We had one ticket with two names on it, I think.

Mr. Ward: I will ask that the libellants produce the ticket.

Q. You bought that for yourself and daughter in

Paris—and when? A. It was before the time of our starting.

Q. It might have been a year before? A. No. It was the 8th I should say.

Q. Within a day or two of the time you left? A. Within a day or two of the time of our leaving.

MR. WARD: I offer to counsel the paper referred to by witness.

THE COURT: The paper is shown to the witness and she is asked if that is the ticket.

MR. FOSTER: No, if your Honor please, I dont ask that.

THE COURT: You must show that to the witness and ask her if it is the one she bought or I shall strike out what she has said. It must come in evidence, you will have to put it in evidence. You are the libellant and you have got to show your case. If there is a ticket bought you must produce it if it is here.

By Mr. Foster:

Q. You paid your passage money to whom? A. To the agent in Paris.

Q. And how much was it?

MR. WARD: I object to that.

THE COURT: I exclude it. The paper is offered to you for your use, Mr. Foster.

MR. FOSTER: I except to your Honor's ruling.

THE COURT: I shall not take oral testimony in regard to the contents of that paper which is offered to you by the other side, but I allow you to prove what she paid.

Q. (Read to the witness.) And how much was it? A. I don't remember.

Q. It was passage money for what?

MR. WARD: I object to that.

Question withdrawn.

Q. What took place between you and the agent? 49

MR. WARD: The lady bought her ticket and she says so, but what took place between her and the agent I object to.

Question allowed.

MR. WARD: We except.

Q. When you paid your passage money what took place between you and the man to whom you paid it? 50

MR. WARD: I object.

THE COURT: I have ruled that you cannot proceed, Mr. Foster, and I shall dismiss the case unless you put the ticket in evidence. The ticket is the contract and you can't recover on the contract without producing it.

MR. FOSTER: I except to your Honor's ruling. I claim that this ticket is not a contract. I do not wish to concede that the ticket is a contract. It has been held to be a token only. 51

THE COURT: The witness has already said she bought one ticket for the two.

Q. Do you remember what day it was? A. Wednesday, I think.

Q. During the first few days of December? A. It was during the first few days in December.

Q. And you sailed from Antwerp on December 9th, did you not? A. Yes, we sailed from Antwerp on December 9th. 52

Q. Wasn't it the 11th? A. We started from Paris on December 9.

Q. And what was the name of the steamer on which you sailed? A. The *Kensington*.

Q. On that steamer you took with you certain baggage, did you not? A. Yes.

By the Court:

Q. I understand you took the steamer *Kensington* on December 11 at Antwerp? A. Yes, sir.

53 Lizzie S. Bleecker.

By Mr. Foster:

Q. Whose property was that baggage? A. Part mine and part my daughter's.

Q. Your daughter Miss Elsie Bleecker? A. Elsie Bleecker, yes, sir.

Q. Was that baggage put on board the steamer? A. We saw it on the wharf.

Q. And it was there in charge of the agents?

54 Mr. Ward: I object.

Q. Was it on the wharf from which the steamer sailed? A. On the wharf from which the steamer sailed.

Q. In how many trunks was it? A. Two.

Q. Were those trunks placed in the steamship hold? A. Presumably, yes.

By the Court:

Q. Did you ever see the trunks afterwards?

55 A. No.

Q. Never saw them? A. No.

By Mr. Foster:

Q. In whose charge were they on the wharf? A. In charge of the Steamship Company. I had the receipt for the baggage from the office in Antwerp.

Q. What did you do with that receipt? A. I gave it to Mr. Cole I think and Mr. Cole gave it to you I think.

56 Q. What did you do with the ticket which you referred to in answer to a question of the Court? A. I folded it up and put it in my bill of exchange pocket-book and the next day going on the steamer I was asked for it and gave it up.

By the Court:

Q. The next day after you went on the steamer?

A. The day I arrived on the steamer, the morning after I had bought it.

Q. The same day you went on board the steamer? A. Yes.

Q. You gave the ticket up? A. To the paymaster on the *Kensington*.

By Mr. Foster:

Q. To whom did you give it? A. To the paymaster.

Q. One of the officers of the *Kensington?* A. Yes, sir.

Q. Did you read that ticket before you gave it up? 58

MR. WARD: I object.

Objection overruled.

A. No, I didn't look at it except that my name was on it.

Q. Have you ever seen it since? A. I have not, unless that is it.

Q. You don't know what that paper is, do you? A. No, sir.

Q. Please don't assume a paper you see lying on the 59 desk is it. What were the contents of those trunks, what was their value?

MR. WARD: Shall we go into the question of damages before your Honor?

THE COURT: No, I shall not go into all these items of the contents of the trunks. I never try the question of damages here.

MR. FOSTER: I except.

THE COURT: I don't exclude general evidence but I can't go into the details to prove the 60 items of the damage.

Q. State generally the contents of those trunks? A. Wearing apparel.

Q. Wearing apparel for yourself and daughter? A. Yes.

Q. Purchased where? A. Partly at home and partly abroad.

Q. About what was its value?

MR. WARD: I object.

61 Lizzie S. Bleecker.

Q. What was its value?

Mr. Ward: I object to that. It is a question to come up before the commissioner.

By the Court:

Q. It was bought partly at home and partly abroad? A. Yes, sir.

Q. How long had you been abroad? A. About a year
62 —not quite.

Q. Was any of this new? A. Yes.

Q. Absolutely new, not worn? A. It had not been worn.

Q. Was it all wearing apparel? A. No.

Q. What were the articles that were not wearing apparel? A. They were photographs and books. I think that is all except wearing apparel.

Q. What were some of the principal items of value? A. Chinchilla cape and black silk dresses.

63 Q. At how much do you value the chinchilla cape? A. It was valued at $300 in New York.

Q. Was that new, or had it been worn? A. It had been worn.

Q. Was it purchased during your travels? A. No; the skins were purchased in South America by my husband and made up in Boston, and I asked the value in Boston and New York, and found it to be $300.

Mr. Ward: I move to strike that out.
64 Motion denied.

Q. Mention any other article of value? A. We had silk dresses given to me by my husband and made up in Paris, of which I put down the value as about $75; but the value in New York at the present time would be $150 or $200. I mean they could not be replaced for less than that.

Q. Do you mean each would be worth $75? A. Yes, sir; each of them. That is what I paid for them.

Q. In Paris? A. Yes, sir.

Q. How many did you mention? A. Two. 65

Q. Worth $75 each? A. Yes, sir. They cost—I can't tell you how much they cost me because they were given to me, the silk was given to me by my husband, who bought it abroad, and I had it made up. I put the value at $75, being from Paris, but here they could not be replaced for double that amount.

Q. Each was worth $150 here? A. Yes, sir.

Q. Were these articles yours, or your daughter's partly? A. Two of the black silk dresses were mine, the third I spoke of belonged to my daughter. The chinchilla cape was my daughter's. 66

THE COURT: I ask these questions merely to have it appear that there were articles of real value. I can not go into the details.

RECESS.

67

By Mr. Foster:

Q. Are there any other articles you can specify?

By the Court:

Q. Of your own, that you claim to be worth more than 250 francs. A. The silk dresses.

Q. You call that $50, don't you? A. Yes, sir.

Q. The silk dresses belonging to you were worth over 250 francs, were they? A. Yes, sir.

Q. You said you took a receipt at the office of the Company for your baggage? A. Yes, sir. 68

THE COURT: If you rest without putting that receipt in evidence, Mr. Foster, I shall dismiss the case. The laboring oar is on you, if you don't show what is done I shall dismiss the case. When you say the libellants received writings you must produce them.

MR. FOSTER: I am willing to produce what my friend calls for but I submit I am not bound

69 *Lizzie S. Bleecker.*

to put in evidence anything that is not necessary.

By Mr. Foster:

Q. Is this paper which I show you the receipt to which you refer?

By the Court:

Q. Which you took for the baggage? A. Yes.

70 Mr. Foster: I ask to have that marked for identification.

The paper is marked Libellants' 1, for identification.

Q. That was before you went on board was it? A. Yes, sir.

By Mr. Foster:

Q. You received that in Antwerp? A. Yes.

71 By the Court:

Q. Was that all the paper that you received, when you delivered your baggage? A. Yes, sir. I had it sent on by petite vitesse from Paris, which is slow freight.

Q. I understand this to be merely for transportation on land except it says, "to be forwarded in bond to Antwerp and there to be put on board the steamship *Kensington* sailing on the 11th of December."

72 Cross Examined by Counsel for Claimants:

By Mr Ward:

Q. You got your ticket in Paris? A. I paid for part of the ticket in Paris, I think I received the paper in Antwerp.

Q. You told us on your examination in chief you got your ticket from the agent in Paris? A. So I did; I paid down a certain amount.

Q. Didn't you get the ticket? A I suppose I got

a receipt for it and gave it up at the office, because that is what I got at the office in Antwerp.

Q. This is what you got in Antwerp at the office (referring to the paper produced by claimant's counsel)? A. I presume it is.

Q. You did get a ticket in Antwerp and you presume this ticket which I now show you is that? A. It is the color, I presume it is.

MR. FOSTER: I move to strike that out. 74

By the Court:

Q. You got a ticket for transportation? A. For myself and daughter.

Q. Mr. Ward is asking about something different. A. He asked if I got a ticket. I got a ticket.

Q. A passenger's ticket? A. A passenger's ticket.

Q. You don't refer to your receipt for baggage? A. Not at all.

MR. FOSTER: I move to strike out, "I presume it is" the ticket. 75

THE WITNESS: I don't know how I can prove it.

Q. What did you do with the ticket that you spoke of before, that you got in Paris? A. I gave my money down in Paris for a ticket.

Q. The whole of it? A. Not the whole of it.

Q. How much did you pay in Paris? A. I don't remember.

Q. Half of it or a quarter,—do you know? A. What is customary. I don't know. 76

Q. You paid part only in Paris?

MR. FOSTER: I move to strike out the statement, "I presume it is" the ticket, on the ground that it is not evidence.

Q. You paid part only at Paris for the ticket that you got there, as I understand? A. I paid a part.

Q. And now you gave up that ticket that you got in

Paris to whom, and when and where? A. In the office in Antwerp—if I gave up anything, I am not sure I gave up anything or if it was merely a receipt or a letter. I had a letter to the Company.

Q. To the company in Antwerp? A. No, to the company in Paris, to the agent in Paris.

Q. I thought you got the ticket in Paris? A. I told you I paid part of the ticket.

78 Q. You spoke of getting a ticket in Paris? A. I thought I did.

Q. You are not sure? A. I know now that I did not get the whole ticket in Paris. I paid part of it.

Q. You paid something in Paris. When you paid that what did they give you for it, for the money you did pay in Paris? Did they give you some kind of a paper? A. I suppose they gave me a receipt, yes, they always do.

By Mr. Ward:

79 Q. You see, Mrs. Bleecker, here is a paper you got in Paris the 2d of December, 1897, some days before you left. You paid 150 francs there and paid the balance at Antwerp. I show you this ticket.

THE COURT: Mark it for identification.

The paper is marked Claimant's A for identification.

By the Court:

Q. Whatever paper you got at Paris, I understood
80 you to say before, you delivered up at the office in Antwerp. Is that correct, or not? A. I am trying to remember. I know that I got something there and I suppose I must have got a receipt of some kind, but this was handed to me——

Q. Having got that in Paris and gone to Antwerp, I understood you to say a few moments ago that whatever the paper was you did get you delivered that up at the Antwerp office and received something else. A. I got my baggage in Paris and paid for it and got a receipt and when I went to Antwerp I got a receipted

baggage check. But I don't think I got any paper in Paris—I am not sure of that—for my personal self, for myself, any ticket.

Q. Did you pay any money? A. I paid down money.

Q. Don't you think you got any receipt for that money? A. I don't think I did. I can ask and find out and I can see from my books, but I don't think I did. 82

Q. Did you get any passenger ticket for the steamer anywhere? A. Yes, I got a passenger ticket in Antwerp after I paid the rest of my money.

Q. Do you mean the part which remained unpaid? A. I had to pay money to reserve a stateroom and get my passage, in Paris. I had some papers, whether they were receipts or not I don't know. At any rate I gave up everything in Antwerp and got this ticket.

Q. This ticket (Claimant's A for identification)? A. Yes, sir. 83

Q. This is the one, is it? A. I don't know, because I merely looked at the ticket. I don't know; I couldn't identify the ticket again if I saw it.

MR. FOSTER: I move to strike out the statement "I presume it is" the ticket as incompetent.

Motion denied.

MR. FOSTER: We except.

Q. Do you recollect whether you got two tickets or one at Antwerp—one paper I mean? A. I got one paper for passage and one paper receipted for baggage. 84

Q. Now, won't you look at that paper (Claimant's A for identification), and say whether you recall it or not. A. I dind't read it when I got it.

By Mr. Ward:

Q. Won't you look at it. A. I see it. My name is on it. I can't identify what I don't know.

Q. You don't look at it. A. I see my name here

and it is the same colored paper, that is all I can testify.

By the Court:

Q. The ticket you received was for yourself and your daughter I suppose. Is that right? A. As I paid two passages, yes.

MR. WARD: I offer the ticket in evidence.

MR. FOSTER: I concede it is the ticket but I object to its admission in evidence as irrelevant and immaterial, and upon the ground that the conditions therein contained are against public policy.

The paper is marked Claimant's Exhibit A.

MR. FOSTER: I except your Honor to the admission of the paper.

MR. WARD: I offer in evidence the baggage receipt.

MR. FOSTER: I object to the admission of the baggage receipt as irrelevant, immaterial and incompetent.

Objection overruled.

MR. FOSTER: I except.

The baggage receipt is marked Claimant's Exhibit B.

Q. Did you receive the ticket on the same day that the vessel sailed, or the day before? A. I think it was the day before.

Q. Do you recollect about what time of day it was? A. It was in the morning before twelve.

Q. Did the vessel sail from Antwerp or from a point down the river? A. From Antwerp.

Q. You got on board at the wharf at Antwerp, did you? A. Yes, sir.

Q. At what time in the day did the vessel sail? A. I don't remember exactly what time it was.

Q. Do you recollect whether it was in the forenoon?

A. It was in the morning I should say; I should say it was before noon, but I am not quite sure whether it was just before or just after. 89

Q. Was it at the same office that you received the receipt for your baggage that you got the ticket for the passage? A. Yes.

Q. And at the same time? A. And at the same time, we made the one visit. I think we got the ticket on one side of the office and the receipt on the other. 90

By Mr. Ward:

Q. Had you been to Europe before? A. Yes.

Q. How often?

MR. FOSTER: I object to that as irrelevant.

Objection overruled.

MR. FOSTER: I except.

A. I have been three times I think.

Q. What sort of passage in respect to weather was this from Antwerp to New York? A. We had a rough passage. 91

Q. Was it a very bad one? A. Fairly bad; yes.

Q. Had you ever seen anything as bad before? A. I have seen times it was as bad, but not the whole trip.

Q. Were you able during the whole of that voyage to go on deck? A. No. But, then many times before I had never been able to either.

Q. On this voyage, for how large a part of it do you recollect you were unable to go on deck? A. I can't tell. 92

Q. A large part? A. I should say half the time we would have been able to.

Q. Were you able to sleep in your berth the whole voyage? A. Yes.

Q. You stayed in that? A. Yes.

Q. Are you a good sailor, Mrs. Bleecker? A. Yes.

Q. You are not troubled by seasickness? A. No; I am a good sailor and not seasick.

By the Court:

Q. What is the reason you couldn't be on deck, then? A. Because of the storm and wind and rain. I was on deck on one of the rough times, but it is not agreeable for a lady to be on deck in a stormy passage.

By Mr. Ward:

Q. Were you able to go to the table to meals all
94 through the voyage? A. Yes; I went, I think, nearly every day, every meal.

Q. But some days you did not. You say "nearly" every meal? A. But some days I did not.

Q. Was that on account of the roughness of the weather? A. Yes.

Q. Wasn't there a tremendous amount of rolling? A. There was, really.

Q. Excessive rolling? A. There was much rolling.

Q. Wasn't it a subject of terror to passengers, the
95 rolling of the ship? A. No, I think not. Nothing was carried away on deck.

Q. But were not the passengers terrified? A. Naturally some of the women were.

Q. You were not? A. I was not. I am a good sailor.

By the Court:

Q. Did you say anything about the value of your merchandise when you took your baggage receipt?
96 A. No, there was nothing said about it.

Re-Direct by Counsel for Libellants:

By Mr. Foster:

Q. Was it on account of the wet coming from the rain that you were kept from the deck, or on account of the wind? A. It was partly the rain and partly the wind.

Q. It was wet weather? A. It was wet weather, yes, sir.

Q. And on these days when you didn't take meals

was it on your own account or daughter's account? A. Partly on my daughter's account.

Q. She was seasick, wasn't she? A. I was not seasick but my daughter was.

Q. Isn't it a fact that one or two passengers in your cabin took every meal and went to every meal? A. Yes, I think it was.

Q. Did you have friends who crossed the Atlantic on other boats the same time as this? A. I can't 98
name them.

Elsie Lynch Bleecker, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Foster:

Q. You are one of the libellants? A. Yes, sir.

Q. And you are daughter of the previous witness? A. I am.

By the Court:

Q. You were passenger with her on the *Kensington*? 99
A. Yes.

Q. Were you present when she went to the Paris office? A. I was.

By Mr. Foster:

Q. Where was that ticket delivered to you, according to your recollection, at Paris or Antwerp? I mean the Claimant's Exhibit A? A. I don't know; I think it was Paris, I can't remember; I know that we had some receipt at Paris, but I don't know whether it was the ticket or receipt for the part we paid. 100

Q. You don't recollect whether you had this or some other receipt which you gave up at Antwerp? A. No.

Q. Did you read that ticket? A. No, I didn't touch it.

Q. Did you read any of the receipts? A. No.

By the Court:

Q. Were you present when your mother got Exhibit A in Antwerp? A. Yes, I was.

101 Elsie Lynch Bleecker.

Q. Do you remember this? A. I don't remember whether we got a ticket in Antwerp or Paris. I suppose that is the ticket, that is the color; I don't know, because I didn't handle the ticket at all.

By Mr. Foster:

Q. You never read that ticket? A. I never read that ticket, no.

Q. Nor the receipt? A. No. I never handle tickets
102 at all, never.

By the Court:

Q. Do you remember seeing a blue paper like that? A. I remember seeing a blue paper like that ticket, but I don't remember where we got it.

Q. Did you see your name in it? A. No, I didn't. I didn't look at it at all.

Q. You don't know whether you got this paper in Paris or Antwerp, or whether your mother did? A.
103 I don't know, no.

By Mr. Foster:

Q. You had some trunks which were intended for your stateroom and not for the hold? A. We had two small steamer trunks, they were taken to the pier marked "stateroom" in large letters, and when we got into our stateroom there were no such trunks there; so I went on the wharf and tried to look them up, and a man told me they were probably over in a pile where
104 they were to go in the hold. I went over and saw four of our trunks, the two for the stateroom and two for the hold.

Q. When you saw them what did you do? A. I got a man and told him to take them down into our stateroom, otherwise they would have gone into the hold because they were with the hold luggage. We got them to the stateroom, they arrived safely because I paid the man to take them in, myself.

Q. They were not damaged in the stateroom? A. They were not damaged in the stateroom, no.

Q. You looked after them yourself? A. Yes, sir.

Q. When did you arrive in New York? A. The 23d of December, 1897.

Q. About what time of day? A. I think about half-past eight or eight in the morning, somewheres around eight o'clock.

Q. Did Mr. Cole meet you there? A. He did.

Q. Did he accompany you to look after your trunks? A. He did. I went on the ship and looked down into 106
the hold and saw the worst mess I ever saw in my life.

Q. Describe it? A. Straw, and pieces of broken china and a few old clothes all discolored with aniline dyes; one of my shoes, and I can't think—the whole thing was in a state of mess.

Q. Any water there? A. Some water there, yes, sir.

Q. Any paint? A. There were colors, aniline colors, so one of the men in the freight place told me. 107

By the Court:

Q. Did you go down in the hold? A. No.

Q. Looked down through the hatches? A. Yes, and saw this mess.

By Mr. Foster:

Q. Which deck was that? A. I looked from? I don't know what you call it.

Q. Was it the main deck?

108

By the Court:

Q. Did you see any trunks at all? A. I saw the remainder of one of our trunks, the cover.

Q. How did you identify it? A. It had our name on.

Q. Were there other trunks there? A. That is all I saw. It was a canvas cover with Bleecker marked on it.

Q. You saw no other trunk? A. I saw no other trunk. I saw parts of a trunk being taken out, outside

on the pier, but I didn't see any more down in the hold at all—some one else's trunk.

Q. Didn't you see any trunks removed from the hold? A. Parts of them, that is all, no whole trunk at all.

Q. When you looked down were the contents of the hold mostly removed or were they still there? A. They were still there.

By Mr. Foster:

Q. They had removed very little, or none at all? A. Very little.

By the Court:

Q. Why didn't you see something else besides one cover to your trunk? A. Because that is all there was to see then.

Q. And the rest covered—? A. With water and straw. Everything was in a mess, you couldn't tell one thing from another.

By Mr. Foster:

Q. Things floating around? A. Evidently they were water-soaked.

Q. Were your trunks ever delivered? A. Never.

Q. Did you ask for them? A. We asked for them.

Mr. Ward: We admit they were never delivered.

The Witness: They were demanded that morning.

Q. Did you give the particulars of your claim to any of the steamship company? A. No, I did not.

Q. Didn't you tell them what was there, didn't you make complaint with Mr. Cole? A. With Mr. Cole, yes, but he did the talking for me.

Q. You authorized him to represent you? A. I did.

Cross-Examined by Counsel for Claimants.

By Mr. Ward:

Q. I understand that when you looked down this hatch everything was in a state of dire confusion? A. Yes, sir.

Q. Total wreck? A. Yes; sir.

Q. You don't mean it was filled with water and things floating around? A. I mean things were water- 114
soaked.

Q. Did you see water there? A. I saw a mix, that was all.

By the Court:

Q. Did you see any of your own articles of dress to recognize them? A. Not then; afterwards, in a pile.

Q. You didn't accept them? A. I did not.

By Mr. Ward:

Q. You saw there had been water there? A. Yes. 115

Q. What sort of a voyage was it? A. It was rough.

Q. Isn't that a little mild? A. I asked one of the officers on board——

Q. Never mind. I asked what you saw. Was it very rough? A. Very rough, yes, at times. It wasn't all the time.

Q. Were there not long periods when it was unsafe to go on deck, and people didn't? A. Not long peri- 116
ods.

Q. How long? A. I don't know. I was seasick all the time.

Q. You were in your stateroom practically all the voyage? A. No, not all the voyage. I generally go up if I can.

Q. Were you ever on deck? A. Oh, yes, sir.

Q. There was a prodigious amount of rolling? A. great deal, but I have seen just as bad going over, perhaps not as long but just as heavy.

117 Charles D. M. Cole.

Q. How do you measure rolling? A. I don't know how.

Q. It is just an impression in your mind? A. Simply rolling.

Q. You wouldn't undertake to say how far over it rolled on one side. A. No.

Re-Direct by Counsel for Libellants:

118 By Mr. Foster:

Q. You spoke of asking one of the officers something. What did you ask him?

Mr. Ward: I object.

Objection sustained.

Mr. Foster: We except.

Q. You spoke about seeing your clothes in piles,—where and when was that? A. The 27th or 28th of December I think; down in the house where they take
119 out the luggage.

Q. Who was with you when you saw it? A. Mr. Cole.

Q. And Mrs. Bleecker? A. And Mrs. Bleecker.

Q. In what condition? A. Absolutely useless.

Q. On what account? A. Stained with the dyes and water-soaked and dirty and torn.

120 Charles D. M. Cole, being duly sworn and examined as a witness for the libellants, testifies:

Mr. Foster: I understand it to be conceded that the libellants claimed for their property within forty-eight hours after their arrival and that no request for a written statement was then made by the Steamship Company's agent.

Mr. Ward: I shall make no objection to libellants' claim on the ground that the demand was not timely or sufficiently explicit.

By Mr. Foster:

Q. What is your occupation? A. Lawyer, attorney and counsellor at-law.

Q. Connected with what corporation? A. American Telephone and Telegraph Company.

Q. You are one of their counsel and live where? A. At Morristown, New Jersey.

Q. Did you meet Mrs. and Miss Bleecker on the arrival of the *Kensington* in December, 1887? A. I 122
did.

Q. Did you then with Miss Bleecker search for their luggage? A. I did.

Q. Please state what you saw and where you saw it? A. I was present when the top of the hold was taken off and pieces of luggage were taken out soaking wet and almost so that we couldn't identify them. I then felt that it ought to be looked into and I went down into the hold where the luggage was supposed to be and searched it. After a long search I found a can- 123
vas cover of one of Mrs. Bleecker's trunks which had her name on it and the top of the other trunk—with which I was familiar—having seen it in my own house. The condition of the hold was about 6 inches of straw, personal effects and merchandise thoroughly soaked; I should say there was a layer of about 6 inches of straw all over the hold.

By the Court:

Q. Are you speaking of some subsequent time? A. I went right down into the hold and looked in the 124
hold.

Q. Where was this 6 inches? A. On top of the floor of the hold.

Q. The floor is the bottom? A. It is on the floor of the hold the debris was.

By Mr. Foster:

Q. Was there anything above it? A. There was roofing over the top.

Q. Was the hold empty? A. The hold was empty

except for the broken luggage and personal effects and merchandise.

Q. It was practically empty then? A. Practically. It was evident the baggage hadn't been properly stowed.

MR. WARD: I object to that as a conclusion and move to strike it out.

Motion granted.

MR. FOSTER: We except.

Q. What hold was this? A. The first hold amidships I should say.

Q. And there was nothing down there only about a layer of six inches on the bottom? A. That is it.

Q. Consisting of straw? A. And merchandise, crockery and personal effects, shoes and dresses and personal effects scattered all over the floor and thoroughly soaked with water and green paint.

Q. How many trunks and parts of trunks did you distinguish down there? A. I should say about three; the two belonging to Mrs. Bleecker and half of the top of another.

Q. What was there besides that in the hold? A. I saw half of a packing case way up forward, which had evidently contained crockery or glassware or china.

By Mr. Foster:

Q. Was that fastened? A. Not fastened at all; it was partly broken open.

Q. Left so it could roll around loose? A. Yes, sir.

Q. Did you notice any dye or paint there? A. I did. I also noticed one or two large, it looked like pewter bowls.

Q. Full of what? A. They were empty; I couldn't tell what had been in them, they looked as if paint had been in them.

Q. Did they look as if they had been used for packing paint? A. I couldn't say.

Q. Did you see the place where the paint or dye had been packed? A. I saw evidence of it in the hold.

Q. But the bottles or demijohns or whatever held the paint you didn't discover? A. No.

Q. Any water there? A. Everything was very wet, soaked through, alongside.

Q. Did you see any signs of their having fastened these articles of merchandise so they could be kept clear from the passengers luggage during the voyage? 130

MR. WARD: I object to what he saw after a complete wreck.

THE COURT: He can tell what he did see.

A. I did not.

By the Court:

Q. Did you look to see? A. I did.

Q. What did you look for? A. I saw it right away, I looked for the baggage and the evidence whether it 131 had been properly stowed or not.

Q. What did you look to find, if anything? A. To see if the trunks had been put in one place and boxed up, and if the merchandise had been separated in other places.

Q. You have only spoken of a box which you said apparently had crockery in it, and some paint, that is all I have heard you speak of besides the trunks? A. This debris that was on the floor was merchandise mostly or broken crockery. 132

Q. What other merchandise besides crockery? A. That is all, except these pewter bowls, which battered to pieces; they looked like bowls, I don't know what they were; there were about five of them, I should think.

By Mr. Foster:

Q. Were many of the articles so crushed it was difficult to distinguished what they were? A. Yes.

133 Charles D. M. Cole.

By the Court:

Q. From what you say, there must have been extremely little in the hold? A. That is my belief.

Q. The hold from the deck above was 10 feet or 12, wasn't it? A. It was all of 8 feet it was the whole width of the ship—and about 30 feet long; it was the hold where the passenger's luggage is all usually put in a steamship.

134 Q. Did you make a careful inspection? A. I did. Before going down there, I thought there would probably be a claim for damage, and I looked at it carefully.

By the Court:

Q. Do you know what dunnage is? A. I do not, not by that name.

By Mr. Foster:

Q. Did you see any articles there which could—

135 any stuff or material there which could have been used to protect the merchandise or keep the articles apart so they should not crush each other? A. Nothing at all of the kind.

By the Court:

Q. How large was this compartment these things were in? A. It was the width of the ship, and I should say 30 feet lengthways. The appearance of the hold to me was of a room about this size in

136 which had been put a few pieces—a few trunks and several crates of crockery, and some boxes of paint.

Q. Several crates of crockery? A. Yes; enough to cover this floor, with this straw; it looked as though it had been about only a third full.

Q. Did you see crates there? A. Only this one. I saw one up forward that was half broken.

Q. Is that besides the box you have said was broken—you spoke of a box before? A. I mean a box or crate.

Q. I understand a box is a different thing from a

crockery crate? A. This was a board box, what I should call a box.

Q. Did you see any crate? A. I don't know exactly what you mean by that.

By Mr. Foster:

Q. Did you see any openings in the box when it was originally packed? A. No openings in it.

Q. Did you see signs of there having been other boxes? A. Yes, sir; the floor was covered with 138
splinters, pieces of crockery and bowls and pitchers; there were plenty of splinters and pieces of board.

Cross-Examined by Counsel for claimants:

By Mr. Ward:

Q. The straw which you saw came out of the crates or boxes which held crockery? A. I should suppose so.

Q. And the general appearance of things to you was there was crockery all mixed up there and baggage 139
and personal apparel. You haven't the slightest idea how many trunks were there, have you? A. Yes, I should say there were not over seven or eight trunks there.

Q. Why do you say seven or eight? A. Because I saw three taken out, and I looked around and saw evidences——

Q. But you are not accurate about that? A. No, it is only an opinion. I saw pieces of trunks taken out, parts of three; they were not whole, they were 140
all falling to pieces as they were taken out.

Q. You don't profess to be an expert about the stowage of ships? A. I do not.

Libellants Rest.

Claimant's Case.

WILLIAM J. ROBERTS, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Ward:

Q. You were master of the *Kensington* on this voyage? A. Yes, sir.

Q. Who stowed the baggage at Antwerp? A. The Company's stevedores.

142 Q. That is done by shoremen? A. That is done by shoremen.

Q. Does any officer on the thip have charge of it? A. Yes.

Q. Which officer? A. Third officer.

Q. Who was he on this occasion? A. A man named Keryl.

Q. Where is he? A. In Antwerp, sick.

Q. How long has he been there? A. He has been in Antwerp ever since December.

143 Q. Ever since this voyage? A. Ever since this voyage.

Q. In Antwerp when the vessel arrives what do you do? A. I go ashore.

Q. When do you come back? A. About two hours before sailing.

Q. How long have you followed the water? A. Twenty-three years.

Q. Were you first in sail? A. Yes, sir.

Q. How long? A. Seven years.

144 Q. Then you went in steam? A. Yes.

Q. As what? A. I went as junior officer.

Q. How long have you been in steam? A. I have been in steam about fifteen years.

By the Court:

Q. How long master? A. About nearly two years.

Q. How long had you commanded the *Kensington*? A. About eight or nine months; about eight voyages I think.

Q. At this time of this voyage, how long before that voyage? A. About six voyages before that, that would be about seven months.

Q. What sort of voyage did you have? A. Very rough voyage. Started in with strong westerly gale leaving the North Sea, moderating a little, later on increasing, blowing very strong from the westward, ship plunging very heavily, shipping great deal of water. And getting towards the neighborhood of Sable Island 146
on December 20, on Monday I think it was, we had a very heavy gale with squalls, hurricane force; ship was laboring very heavily, which necessitated me to lay her to for 14 or 15 hours; put her head to the sea.

Q. How did you head—off your course? A. Oh yes, sir; the sea was abeam while the ship was on her course.

Q. So you had to throw her head up? A. I had to bring her up within two points of the wind.

Q. How much off your course was that? A. About 147
four to five points.

Q. You lay in that way for 13 or 14 hours? A. For 13 or 14 hours.

Q. How much headway were you making at that time per hour? A. About two knots.

Q. How was the ship behaving? A. She was behaving—she was rolling very heavy.

Q. How far would she roll? A. From thirty-eight to forty-five degrees.

Q. Is there any way of ascertaining how much she 148
rolls? A. Yes.

Q. How is that done? A. By clinometer.

Q. That indicates the angle to which she rolls? A. Yes. That is thirty-eight or forty-five degrees either side.

Q. Did you ever see a vessel roll as much as that in your life? A. I don't think I ever have, I am sure I never have.

Q. Did you ever while you have been in steam on the

149 Atlantic have such weather? A. No, I was never necessitated to heave-to before.

Q. Never was on a ship that hove-to for 13 or 14 hours? A. No, never in that class of ship. I have been in a small tramp of 1,500 tons when I had to do it.

By the Court:

Q. What is the size of the *Kensington?* A. 8,000
150 tons.

Q. Is that burden or register? A. That is gross; 8,400, I think it is, gross.

Q. What is her length? A. 480 feet I think it is.

Q. Beam? A. Beam, 61 feet—62 feet.

Q. Depth of hold? A. Depth of hold would be about—I really couldn't tell you for sure, I forget.

By Mr. Ward:

Q. When was she built and where? A. She was
151 built in Glasgow at Clyde Bank.

By the Court:

Q. What year? A. She is four years old now; this was in 1894.

Q. Is she a ship of good class? A. Oh, yes; 100 A^1 at Lloyds.

By Mr. Ward:

Q. Great carrier? A. Yes. Carries 10,000 tons weight.

152

By the Court:

Q. Did you have other passengers? A. A fair number for that time of the year.

Q. How many did you have? A. I really forget. I should say about—something in the neighborhood of 40 in the cabin and about 150 or 160 in the steerage.

By Mr. Ward:

Q. During that voyage were there, or were there

not, periods of time when the passengers couldn't go on deck?

MR. FOSTER: I object to that as irrelevant.

A. I gave an order not to allow passengers on deck.

MR. FOSTER: I move to strike that out as irresponsive.

Motion denied.

MR. FOSTER: I except. 154

Q. On what ground was that? A. For fear they would be getting hurt.

Q. Coming back to the 20th of December, what was the character of the sea itself? A. We described it as a mountainous sea, very heavy sea, confused.

Q. Did you ascertain at any time on that day whether any of the cargo or baggage had got adrift? A. Yes.

Q. Where did you first look? A. I first looked 155 amongst the steerage baggage.

Q. Where was that? A. Aft in No. 4.

By the Court:

Q. Do you know where the trunks of the libellants were placed? A. I do.

Q. Where were they? A. In No. 2 steerage. upper steerage, in the after part.

Q. Not in the hold? A. No, sir, not in the hold, no; in No. 2 steerage deck; of course the hold is under the orlop. 156

Q. In the upper steerage deck? A. In the upper steerage deck, yes, sir.

Q. No. 2? A. No. 2. That is the place used for passengers but was unoccupied.

By Mr. Ward:

Q. Why did you look first at the steerage passengers' baggage? A. Because it was impossible to get near the hatches where the cabin baggage was on account of the seas breaking aboard the ship.

Q. Where was the steerage passengers' baggage, in what part of the ship—aft? A. Aft, farther aft, yes.

Q. What was the condition of the steerage passenger's baggage? A. It was considerably broken up.

By the Court:

Q. Where was that stowed? A. No. 4, on the upper deck, in the steerage deck, lower steerage deck, No. 4 lower steerage deck. That is the third deck—

Q. Is that next above the orlop? A. Yes, sir.

By Mr. Foster:

Q. Third deck from the top? A. Third deck from the promenade.

By the Court:

Q. The libellants' baggage was stowed one deck above this? A. Above where the steerage was.

Q. I thought you said the baggage was stowed on the orlop deck? A. Oh, no, no, sir. I said the hold was under the orlop. This gentleman asked if it was in the hold, I said no, the hold was under the orlop.

Q. You found that baggage considerably smashed? A. Yes, sir.

By Mr. Ward:

Q. What time of day did you get at that baggage? A. Some time in the forenoon.

Q. You went and looked at that baggage? A. Not personally. I gave an order to the chief officer to go and investigate to see if there was any damage done.

By Mr. Foster:

Q. You didn't see that yourself? A. Not the steerage.

Mr. Foster: I move to strike that out.

The Court: If there was any report he may state it.

The Witness: The report was made to me.

By Mr. Ward:

Q. What part of the day did you examine or direct an examination to be made of the upper steerage deck? A. I directed an examination in the afternoon.

Q. Why didn't you do it before? A. The weather was moderating slightly and we were enabled to do it.

Q. Before that you couldn't do it? A. No, sir.

Q. Was any report made to you as to the condition of things?

Mr. Foster: Answer yes or no.

A. The chief officer reported to me so.

Q. Oblige my friend by saying yes? A. Yes.

By the Court:

Q. Did you examine it personally or send an officer to examine it? A. I done both, sir.

By Mr. Ward:

Q. What did you find to be the case when you got there? A. When I got down myself I found the place in a state of chaos.

Cross-Examined by Counsel for Libellants:

By Mr. Foster:

Q. This was the passengers' baggage? A. I am speaking of passengers' baggage and freight that was stowed there.

By the Court:

Q. Do you know what was stowed there besides trunks? A. There was cases of Dresden, I should call them, crates of Dresden and some Paris goods; light Paris things in cases.

By Mr. Ward:

Q. By "Dresden" do you mean china? A. By Dresden I mean china.

By Mr. Foster:

Q. Was there any paint or dye there? A. No.

By the Court:

Q. Case goods? A. Some case goods; Paris goods.

Q. In boxes of wood? A. Yes, sir.

By Mr. Foster:

Q. There was no paint packed there? A. No;
166 there was dye stowed in the lower hold, powdery stuff; in discharging the color may have spread over the deck.

Q. There was dye stowed in the lower hold? A. Yes, sir; aniline dye.

Q. In what condition, liquid or granular? A. Powder I guess. That was right in the bottom of the ship.

Q. How was that packed—covered over or simply packed in there loose? A. What do you call "covered
167 over?"

Q. Separated from the baggage? A. It wasn't in the same hold at all.

Q. A different hold? A. Certainly. In the lower hold, divided by three decks.

Q. Was that lower hold wet when you landed? A. No.

By the Court:

Q. When you examined this compartment where the
168 passengers' baggage was did you find any water there? A. Yes, sir.

Q. How much? A. It was principally caused by steam condensation. There was a steam pipe that had been carried away by the impact from the stuff, when it got adrift it carried away a steam pipe, that was the cause of the water, one of the heating exhaust pipes.

By Mr. Foster:

Q. When what got adrift? A. The baggage and cargo that was stowed in the place.

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Q. Is the *Kensington* a fast boat? A. What do you call a fast boat?

Q. I asked you. A. She is not a 20-knot ship.

Q. What is the best time in the month of December the *Kensington* ever has made? A. Tuesday morning.

Q. How many days is that? A. From Saturday to Tuesday.

Q. How many days? A. Ten days.

170

Q. What is the slowest time she has ever made?

By the Court:

Q. About how many knots will she make in ordinary sea weather? A. She will average 14 3-4 across the Atlantic; she will make good 15 knots in fine weather.

By Mr. Foster:

Q. The fastest time is ten days? A. She has been in very early on Tuesday morning.

171

Q. From Antwerp to New York? A. From Antwerp to New York.

Q. And at times it has taken her 14 days to cross? A. No; on Thursday is the latest time she has ever been in.

Q. That is 12 days? A. You can figure it.

Q. From the 23d to the 11th is 12 days? A. I don't know whether it was the 11th or not. I know she came in on Thursday.

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(The balance of the hearing taken in Chambers.)

Q. (Read to witness.) From the 23d to the 11th is 12 days. Isn't that 12 days? Please try to answer my question. A. Yes, it is 12 days.

Q. Do you mean to say no boat of that line has ever taken 12 days to cross from Antwerp to New York? A. I say that boat has not.

Q. Other boats have? A. I don't know. I was only in that ship that time.

Q. How many voyages have you made on that ship? A. Nine altogether now.

Q. All you can speak of is concerning the nine voyages you have made? A. Yes.

Q. Is that the first time you ever crossed the Atlantic in December? A. I said I had been twenty-three years at sea and I have been crossing the Atlantic the best part of that time every month, making 16 voyages
174 in a year in fast ships.

Q. Please answer my questions and not argue with me, (Question repeated.) Is that the first time you ever crossed the Atlantic in December? A. No.

Q. Isn't that one of the roughest months in the year? A. No.

Q. What is the roughest month in the year? A. January.

Q. What is the next roughest? A. December.

Q. These were head winds, these westerly winds,
175 weren't they? A. Northwest winds; the worse we had was north-northwest.

Q. When did you last see the third officer? A. I saw him two weeks ago.

Q. Where was he then? A. In Antwerp.

Q. In a hospital? A Yes.

Q. Did you talk with him? A. Yes.

Q. What was the nature of his illness, or don't you know? A. I don't know what the nature of his illness is; he can't walk.

176 Q. You had a long talk with him, did you? A. Yes.

Q. How long before that had you seen him? A. I saw him about two voyages previous to that, I called on him.

Q. He was sick then and you had a talk with him? A. Yes, sir. He has been laid up ever since.

Q. Is he still in the employ of the company? A. Yes.

Q. You are, too, are you not? A. Yes, sir.

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Mr. Ward: I offer in evidence the deposition of Maurice de Cock:

Mr. Foster: I object to the admission of the deposition on the ground that the witness failed or refused to answer the questions put to him on his cross-examination.

The Court: I receive that in accordance with the ruling at the beginning of the trial.

Mr. Foster: I except to the ruling,

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Mr. Foster: I object to the admission in evidence of the answer to the 6th interrogatory, upon the ground that the witness failed or refused to answer to the second cross-interrogatory fully as directed in said cross-interrogatory.

Objection overruled for the same reason as above stated.

Mr. Foster: I except.

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181

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

LIZZIE S. BLEECKER and another

vs.

The Steamship "KENSINGTON."

182

Testimony of M. MAURICE DE COCK taken before GEORGE F. LINCOLN, U. S. Consul at Antwerp, Belgium, on the 10th day of May, 1898:

First Interrogatory:

Please state your age, residence and occupation.

A. My age is 37 years, my residence at Antwerp; by occupation a lawyer, and Professor at the "Institut Superieur de Commerce."

183

Second Interrogatory:

If you say you are a lawyer, please state where and when you were admitted to practice as a lawyer?

A. At Antwerp in the year 1883.

Third Interrogatory:

Where are you entitled so practice as a lawyer?

A. Everywhere in the Kingdom of Belgium.

184 Fourth Interrogatory:

Where have you practiced as a lawyer, and of what bar are you a member?

A. Principally at Antwerp and I am a member of the Antwerp bar.

Fifth Interrogatory:

Have you any position in connection with a college, institute or university, and, if so, what, and how long have you had the same?

A. Yes; Paofessor at the "Institut Supérieur de Commerce," held continuously since 1884. 185

Sixth Interrogatory:

May, or may not, a carrier by the law of Belgium exempt himself by contract from liability for the negligence or default of his servants?

A. Yes; according to the laws of Belgium, he can.

Seventh Interrogatory:

Have there been any adjudications of Courts or Judges in Belgium which are reported upon the validity of the following provisions in a contract between a carrier and a passenger? 186

The shipowner or agent is not under any circumstances liable for loss, injury or delay to the passenger's baggage arising from any act, neglect or default of the shipowner's servants, whether on board the steamer or not.

A. I do not know any decision or adjudication of our Courts relative to the particular case in question, that is concerning the baggage of a traveler, but the underlying principle has been decided by our Court of "Cassation" in 1885, which decided that the liability of a carrier for the act of his servant, his neglect or default, does not concern public policy, but the liability can be limited or annulled entirely by contract. 187

Eighth Interrogatory:

If you say there have been, please refer to the case or cases and the book or books in which the case or cases may be found reported. 188

A. The first case in which the underlying principle was decided was rendered on November 12th, 1885, and will be found in the "Pasicrisie Belge" of the year 1885, first section, page 275.

Ninth Interrogatory:

Please state whether by the law of Belgium the fol-

189 lowing provision in a contract made in Belgium between one owning or operating a steamship sailing from Antwerp to New York and a person taking passage on the same at Antwerp is or is not valid and enforceable, namely :

The shipowner or agent is not under any circumstances liable for loss, injury or delay to the passenger's baggage arising from any act, neglect or default of the shipowner's servants whether on board the steamer or not.

190 A. Yes, such a provision is valid and enforceable.

Tenth Interrogatory :

Would it make any difference in your answer, and if so what, that the injury to the baggage occurred on the high seas as the result of bad or insufficient stowage of the same by the Company's servants at Antwerp before the ship sailed ?

A. No difference.

191 Eleventh Interrogatory :

Please answer as if interrogatories seventh, eighth, ninth and tenth were repeated to you in respect to the following clause in a contract made in Belgium between a carrier by steamer and a passenger taking passage at Antwerp for New York :

The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passenger's baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is here-
192 by valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent. or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading in use from the port of departure.

A. In answer to the seventh interrogatory regarding the clause cited in the eleventh interrogatory, I would answer no ; to the eighth interrogatory my answer is I cannot ; in answer to the ninth interrogatory I say yes the clause would be valid ; in reply to the tenth interrogatory I should say it would make no difference.

DISTRICT COURT OF THE UNITED STATES, 193

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LIZZIE STEARNS BLEECKER

AGAINST

The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY. 194

CROSS-INTERROGATORIES:

First Cross Interrogatory:

Do you know of any provision or provisions in the statutes, or code of Belgium, or any decision or decisions, or any opinion or opinions, of a Court of Justice of Belgium, which decides or decide, discusses 195 or discuss, determines or determine, regulates or regulate, affects or affect the validlty of, or recognize or recognizes the validity of such a contract as is referred to in the 6th interrogatory, or such a contract as is referred to in the 8th interrogatory or such a contract as is referred to in the 9th interrogatory attached to the commission herein?

A. I know of several decisions of our Courts which recognizes the validity of such a contract as is referred to in the sixth interrogatory. 196

Second Cross-Interrogatory:

If so, please to quote such statute or statutes, decision or decisions, code provision or provisions, opinion or opinions so far as it applies or they apply at length; and specify the volumes and pages of all publications within your knowledge which contain the same?

A. I quote the decision of the Court of "Cassation" rendered on the 12th day of November, 1885, of the

197 "Pasicrisie Belge," first section, edition of 1885, page 275; decision of the 14th day of February, 1895, found in the "Pasicrisie Belge," first section, edition of 1895, page 93; decision of the Court of Appeals of Brussels, rendered the 27th day of July, 1896, found in the volume entitled "Jurisprudence du port d'Anvers," published in 1897, page 35.

Third Cross-Interrogatory:

Are any contracts by the law of Belgium void be-
198 cause against public policy?

A. Yes.

Fourth Cross-Interrogatory:

If to your last cross-interrogatory you answer yes, name and describe every class of such contracts.

A. A contract containing a clause by which one of the parties agrees not to be held responsible even in case of malicious deceit would not be valid as against public policy.

199 A contract by which a workman or servant should bind himself or herself for life would not be considered valid but contrary to public policy.

A marriage contract which contains a provision that neither of the contracting parties shall bring a suit for divorce at any time or for any cause, would be void as contrary to public policy.

Any contract tending to modify the right of either parent derived from the marriage relation, the right of parents pertaining to the protection of the children,
200 their education, property rights, etc., cannot be modified by contract as being contrary to public policy.

201

Claimants' Ex. "A."

RED STAR LINE.

Regular Mail Steamers between
Antwerp & Philadelphia.

Antwerp and New York,
S. S. 25876
Exchange for S. C. A.
in conjunction with S. E.

Room 4, Berths 1 & 2
Scale 237 ½

202

Passengers names. Age.
Mrs. Bleecker, Miss Bleecker.
Stamp.

Paris on the 2nd of Dec. 1897.
This ticket is good for second cabin passage of the persons named in the margin, to wit:

Two adults——— children———-infants ——— servants by the British Steamship *Kensington* from Antwerp, on the 11th of December, 1897, ai 1 o'clock, P. M., unless prevented from unforseen circumstances with 20 cubic feet of personal baggage for each adult passenger, free of charge, excess being charged for at the rate of 125 francs per cubic foot.

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Notice to Passengers.

It is a condition upon which this ticket is granted and is mutually agreed for the consideration aforesaid that—

I. (*a*) The steamer has leave to sail or enter any port with or without pilot and although deviating from the voyage to tow and assist vessels in all situations or to be towed and to put back or into any port for any
206 purpose at the discretion of the master.

(*b*) If prevented by any cause from proceeding in the ordinary course to forward the holder of the ticket by any other vessel whether belonging to the same shipowner or not and whether bound to the original port of destination or not, the shipowner in the latter case paying any passenger's railway or steamboat fare or like expense to the point of destination.

(*c.*) The shipowner or agent are not under any cir-
207 cumstances liable for loss, death, injury or delay to the passenger or his baggage arising from the act of God, the public enemies, fire, robbers, thieves of whatever kind, whether on board the steamer or not, perils of the seas, rivers or navigation, accidents to or of machinery, boilers or steam, collisions, strikes, arrest or restraint of princes, courts of law, rulers or people, or from any act, neglect or default of the shipowner's servants, whether on board the steamer or not or on board any other vessel belonging to the shipowner,
208 either in matters aforesaid or otherwise howsoever. Neither the shipowner nor the agent is under any circumstances or for any cause whatever or however arising liable to an amount exceeding 250 francs for death, injury or delay of or to any passenger carried under this ticket. The shipowner will use all reasonable means to send the steamer to sea in a seaworthy state and well-found but does not warrant her seaworthiness.

(*d.*) The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket be-

yond the sum of 250 francs at which such baggage is 209
hereby valued, unless a bill of lading or receipt be
given therefor and freight paid in advance on the ex-
cess value at the rate of one per cent. or its equivalent
in which case the shipowner shall only be responsible
according to the terms of the shipowner's form of
cargo bill of lading, in use from the port of depart-
ure.

The shipowner or agent are not responsible to
any extent or under any circumstances for gold or
silver in whatever state, money, jewelry, precious 210
stones, watches, clocks, paintings, engravings, title
deeds or other writings, bills, bank-notes of any
country, orders, notes or securities for payment of any
money or of silks, furs, laces or cashmere in what-
ever state or any other valuable property of the like
description contained in any baggage unless declared
and the value thereof stated in writing and unless
the same be delivered into the personal custody of
the chief steward or person of the vessel and then
the ship-owner shall not be liable beyond the sum 211
of 250 francs or its equivalent unless freight be paid
in advance on any value exceeding the sum aforesaid
at the rate of one per cent. in which case the ship-
owner will carry the goods subject to the conditions
contained in the shipowner's form of cargo bill of
lading in use from the port of departure.

(*e.*) No claim shall be available against the ship-
owner or his property or the agent unless notice in
writing thereof with full particulars of the claim be 212
furnished to the shipowner within forty-eight hours
of the passengers being landed from the steamer at
the termination of the voyage or in case of the
voyage being abandoned or broken up within seven
days thereafter.

2.—According to the United States law of March
3rd, 1891, the following classes of emigrants shall be
excluded from landing: idiots, imbeciles, insane, crip-
ples, or persons afflicted with bodily infirmities, con-
sumption and persons with loathsome or contagious

213 diseases, criminals, convicts and inmates of poor houses or persons who are likely to become a public charge, persons unable to work having no friends to care for them, unaccompanied women with children when they are not expected by their husbands or relatives who will care for them, girls with children or in a state of pregnancy; laborers who previous to their immigration have been engaged for work in the United States.

3. This ticket must be produced to any of the Com-
214 pany's servants when required, and given up on demand at the sailing of the vessel, and the ticket is only available for the date for which it is issued. If through any act of the passenger it is not used for that date, or lost or mislaid, it is cancelled, and the passage money absolutely forfeited.

4. Every responsibility hereunder of the shipowner or agent shall be limited to that period only whilst a passenger and his baggage are on board the Trans-
215 atlantic Ocean Steamship or its steam tenders. All other carriage from the point of departure to the point of destination will be subject to the ordinary conditions of carriage of each railway or transportation company employed for the purpose or to any special condition required by them.

5. If passengers are booked from or to any other places than the steamship's ports of departure and destination it is for their convenience only and at their risk in every respect.

216 All questions arising hereunder are to be settled according to Belgium Law with reference to which this contract is made.

JOHN MACKLIN,
For General European Agents.

Passage money...	475 00	Received the balance
Received.....	150 00	RED STAR LINE,
		Antwerp.
Balance to be paid before embarking.....	325 00	Fr. Otto
		For General European Agents

Dec. 1897 Cabin Department. 217

No receipt will be recognized on board if not signed by the agent who issued the ticket or by the office in Antwerp.

Parcels, chairs and baggage of every description sent in advance must be addressed to Von der Becke & Marsily, passenger department Antwerp (Bassins); the same 218

must be claimed at the office latest on the day before sailing to insure delivery on board.

(On margin.)

Von Der Becke & Marsily, General European Agents, Antwerp.

International Navigation Company General Agents, 6 Bowling Green, New York; 307 Walnut Street, Philadelphia; 32 South Clarke St., Chicago 219

(On back.)

Blank for information required by U. S. authorities not filled in.

Libellants' 1—(For Identification).

Received for R. R. carriage and charges on baggage or : 220

Empfagen für Bahnfracht und Spesen oder auf Gepack :

Recu pour port et frais sur bagages ou :

L/V		fr.	"
"	21358	"	24"
"		"	"
"		"	"

221 R. R. Baggage check " "
Storage Receipt " "
: Ocean freight
For : Ocean freight on excess of
Baggage " "
:

Clts Ex. B Total fr.

Weight, contents and value unknown and shipped by the Red Star Line steamer, subject to the conditions
222 contained in the Co's ticket and bill of lading.

RED STAR LINE.
Antwerp
Dec. 97
Caisse.

223

224

225

UNITED STATES DISTRICT COURT.

Southern District of New York.

Lizzie Starins Bleecker and Elsie L. Bleecker,

against

The Steamship "Kensington," her boilers, engines, &c.; The International Navigation Company.

226

In Admiralty. Passengers' Baggage.

Roger Foster for Libellants.
Robinson, Biddle & Ward for Claimant.

Brown, J.: 227

The above libel was filed by Mrs. Bleecker and her daughter to recover for the loss of their trunks and personal effects upon their passage by the British Steamship *Kensington* of the Red Star Line, from Antwerp to New York in December, 1897. The defense was a loss by sea perils, and second, a limitation to the sum of 250 francs under the provisions of the passenger ticket.

The libellants' trunks were stowed in what was known as No. 2 upper steerage in the after part of the third deck above the hold, sometimes used for passengers. A few other trunks were stowed there and some crates of china. The steamer sailed from Antwerp December 11th. The voyage was extremely rough. For most of the time the passengers were not allowed on deck. On December 20th the steamer met a very heavy gale in which she labored heavily and was obliged to lie to for 14 or 15 hours, which had not previously occurred in the master's experience 228

229 of 23 years. The steamer was a first-class ship of about 8,000 tons. In this gale some of the baggage got adrift, both in No. 2 steerage and in the steerage on the deck below. As soon as it was possible the apartment where the libellants' baggage was stowed was examined, and the captain describes it as being in a state of chaos. Trunks and crates were broken and damaged by water in the apartment, coming from the condensation of steam from a steam pipe which had been carried away in the storm.
230 The vessel arrived in New York on the morning of December 23rd. The value of the contents of the trunks was above 250 francs for each of the two passengers, and it is stated in the libel to have been of the value of $2,000. The libellants had been traveling in Europe for about a year. The evidence leaves no doubt that the ticket for the two passengers, which is marked Claimant's Exhibit A, was purchased by Mrs. Bleecker in Paris on December 2nd. She testifies that at that time she paid part of the money for
231 the passage and afterwards on arrival at Antwerp paid the rest. The ticket is dated at Paris, December 2nd, 1897; and there is a stamped receipt beneath the signature of the ticket, dated at Antwerp, December 10th, for the balance of the passage money. This accords with the testimony of Mrs. Bleecker, that she paid this balance at the office of the Company in Antwerp on the day before the steamer sailed, and at the same time delivered her trunks and received her baggage check, stating that it was shipped "subject to
232 the conditions contained in the Company's ticket and bill of lading."

In the body of the ticket, under the head of "Notice to Passengers", it is stated as follows:

"It is a condition upon which this ticket is granted and is mutually agreed for the consideration aforesaid that." * * * Here follow ten paragraphs in type somewhat smaller than the preceding type, but perfectly clear and legible, stating numerous conditions. These ten paragraphs are followed by the provision:

"All questions arising hereunder are to be settled according to Belgian law with reference to which this contract is made"; after which is the signature of the Company's agent. The third paragraph provides that "the shipowner or agent are not under any circumstances liable for loss, default, injury or delay to the passenger or his baggage, arising from the act of God, public enemies, fire, robbers, thieves of whatever kind, whether on board the steamer or not, perils of the sea, rivers, or navigation, accidents to or of machinery, boilers or steam" * * * "or from any act, neglect or default of the shipowners' servants, whether on board the steamer or not." 233 234

"The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent. or its equivalent."

235

At the time when her baggage was delivered to the Company at Antwerp on the 10th of December, Mrs. Bleecker made no statement of its value, and paid no freight on its excess over 250 francs.

No evidence was introduced as to the particular mode of stowage, except that it was stowed by the Company's stevedore at Amsterdam under the supervision of the third officer, who at the time of the trial was sick there.

236

1. Contrary to the libellants' contention, I must hold upon the authorities that a ticket of the character above described for a transatlantic passage is a unilateral contract, and like a bill of lading is binding upon the person who receives it, so far as its provisions are reasonable and valid. It is essentially of the same character as the ticket in the case of Steers *v.* Liverpool, N. Y. & P. S. S. Co. (57 N. Y., 1), where Johnson, Justice, in reference to a claim similar to this observes:

237 "The plaintiff by her agent, was an applicant for a passage to Europe by the defendant's ship, the voyage to be commenced at a future day, and received on payment of the price a written engagement from the defendant expressing its undertaking. A printed *fac simile* of this paper is before us, and although part of it is in smaller type than the rest, no part of it is in such type as to suggest to the mind the idea of concealment as the possible motive for its being so printed." * * * "Looking to the course of business, the Court may
238 take notice that an engagement for a voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket or taking an Express Company's receipt for baggage or for freight. There is, therefore, no room in such a case for the suggestion that the party is surprised into a contract, when he supposes himself only to be taking a token indicative of his right. The paper in evidence ought, therefore, to be regarded as having received the mutual assent of the parties, and as being, as its language pur-
239 ports, their contract touching the voyage in question."

I find nothing later diminishing the force of these observations. See Zimmer *v.* N. Y. C. & H. R. R. Co., 137 N. Y., 460, 462.

2. One of the exemptions specified in this ticket or contract is losses "by perils of the sea," and upon the evidence, if preliminary proof of good stowage had been given, I think a *prima facie* case of loss by sea perils would have been made out, which it was incum-
240 bent on the libellants to rebut by proof of negligence in the ship. The evidence leaves no doubt that the passage was one of very extraordinary severity, such as might account naturally for what happened, viz., the baggage getting adrift and breaking the steam pipe, even though the baggage was well stowed; but it might also happened from poor storage, of which some evidence was sought to be given, though I do not regard it as of much weight. There is no direct evidence of the mode of stowage, but only that the baggage was stowed by the regular stevedores of the line.

It is urged that this furnishes a reasonable inference 241
of customary good stowage; and when there is proof, as there is in this case, of very extraordinary weather and rolling of the ship, such as would naturally cause baggage stowed with ordinary care to get adrift, it is claimed that the authorities indicate that the burden of proof is on the libellants to show some negligence, but for which the loss might nevertheless have been avoideed. See Clark *v.* Barnwell, 12 How., 272. 280. The Supreme Court in that case approved the ruling of Lord Chief Justice Denman in Muddle *v.* 242
Stride, 9 Car. & P., 380: "That if on the whole it be left in doubt what the cause of the injury is, or if it may as well be attributable to perils of the sea as to negligence, the plaintiff cannot recover," * * * "but the jury were to see clearly if the defendants were guilty of negligence before they could find a verdict against them." In the case of the *Neptune* (6 Blatch., 193), the same point was ruled where a steamship "encountered on the voyage an unusually violent storm which fully accounted for the damage within an 243
exception in the bill of lading;" and it was held by Mr. Justice Nelson that this threw the onus on the shipper to establish carelessness or negligence on the part of the master or owners of the vessel leading to the particular loss; and for failure to establish this a decree dismissing the libel was affirmed. See the *Fern Holm*, 24 Fed., 502, 503; the *Portuence*, 35 Fed., 670. These cases, however, do not dispense with the usual proof of good stowage by the ship. To assume proper stowage upon mere inference, and to throw upon a ship- 244
per or passenger the burden of proving the contrary, without any proof by the ship, seems unreasonable and inequitable, considering that proof on this subject is peculiarly within the power of the ship to produce and comparatively easy for her, but difficult if not often impossible for the passenger or shipper. Proper stowage, moreover, is essential to seaworthiness as respects cargo, or baggage, and hence this essential preliminary condition of seaworthiness should have been established by the ship

245 by proof of proper stowage, just as in the *E. I. Morrison* (151 U. S., 210), it was held necessary to be established by proof of proper inspection. In Clark *v.* Barnwell, *supra*, it is expressly stated in the opinion of the Court (p. 281) that the stowage was good. The record and the opinion of Shipman, J., in the court below in the case of The *Neptune* show the same; and the same appears in the other cases above cited. This branch of the defense, therefore, I cannot sustain.

246 3. The limitation of liability to 250 francs, is a limitation which it was competent for the defendant Company to make. Hart *v.* Pa. R. R. Co., 112 U. S., 331. The libellants are chargeable with notice of this provision whether they read the contract or not. The ticket was in their possession for more than a week before the ship sailed, and before the baggage was delivered to the Company. Every European traveller knows how much more exacting there than with us are
247 the usual conditions as respects the transportation of luggage, and the extra charges therefor. There was nothing to justify the libellants in supposing there were no restrictions as to baggage; and they had abundant opportunity to examine the clear provisions of their ticket; and if they were ignorant of them it was by their own choice. It is not unreasonable that carriers should refuse for an ordinary charge to hold themselves answerable for an extraordinary or indefinite responsibility, and to charge extra compensation for increased
248 risks; if travellers pay no attention to the provisions on these points incorporated into the contract of carriage, it is right that they should themselves bear the additional risk.

In the recent case of Calderon *v.* Atlas S. S. Co. (Apl. 25, 1898), the Supreme Court in refusing to the carrier the benefit of any limitation, did so upon the distinct ground that the limitation there sought was against *all* liability and recognized the validity of such a limitation as is here provided.

4. Proof was taken by depositions that the Belgian

law sustains exemptions of carriers from responsibility for the negligence of servants when the contract so provides. In the answer to the cross interrogatories on this point, the witness did not state at length the authorities and decisions in the sense in which the libellants' consel intended by his interrogatories that the witness should state; but the answer is in such form, with a reference to the authorities relied upon, that I do not think there was any intent on the witness' part to evade the question, which in translation into another language may have appeared only to call for the references to the authorities instead of the language of the decisions; and indeed the language of the decisions was not in terms asked for by the interrogatories. I do not think the failure to answer the cross interrogatories more fully, therefore, detracts from the credit to be given to the deposition, which is in fact in accord with the general law of Continental Europe. The libellants' counsel, however, in preferring to proceed to trial rather than incur the delay of sending the commission back to the commissioner for further answers on this point, in effect waived any objection on this score. 249 250 251

This contract of carriage was, however, to be performed in part within our jurisdiction, by the delivery of the baggage here in good condition; and though the presumed negligence as respects proper stowage was negligence abroad, it cannot be said that none of the consequent damage occurred within our jurisdiction. Upon the evidence I think that damage to the extent of at least 250 francs, as to each libellant, did occur here; so that the cause of action in part arose here; and in such cases our own law, as respects exemptions that are against public policy must, I think, control. It is not competent for the respondent to defend a tort committed here by proof of a foreign contract void as against our public policy. It is a question of comity purely; and comity does not require us to reverse our own policy as respects torts committed within our own territorial jurisdiction. 252

I have heretofore held that the Harter Act has

253 reference to the transportation of "cargo," and does not apply to the transportation of passengers, nor to their baggage when not shipped as cargo, or on payment of freight. (*Rosedale* and *Oregon*, March 28th, 1898.)

Decree for the libellants for the equivalent of 250 francs each, with interest and costs.
July 6/98.

254

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 5th day of October, 1898.

Present—Honorable ADDISON BROWN, District Judge.

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255 LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,

Libellants,

vs.

The Steamship "KENSINGTON," her boilers, engines, etc., INTERNATIONAL NAVIGATION COMPANY,

Claimant.

256

This cause having coming on to be heard upon the pleadings and proofs, and argued and submitted by the advocates of the respective parties, and due deliberation had, and an opinion filed herein that the libellants should recover the equivalent of 250 francs each with interest and costs,

Now, on motion of Roger Foster, proctor for the libellants, it is

Ordered, adjudged and decreed that the above-named

libellants, Lizzie Stearns Bleecker and Elsie L. Bleecker, do have and recover against the steamship *Kensington*, her boilers, engines, tackle, apparel and furniture, the sum of $96.20, with interest from the 23rd day of December, 1897, and costs amounting to $51.30, making in all the sum of $151.59, for which sum, so as aforesaid hereby awarded to the libellants the said steamship *Kensington*, her boilers, etc., are hereby condemned. 257

And on like motion it is further

Ordered: that the stipulators for costs and value on behalf of the said steamship *Kensington*, her boilers, etc., and her claimant, cause the engagements of their several and respective stipulations to be fulfilled, or, unless an appeal be taken within the time limited by law and the practice of this Court from this decree, that they show cause on a notice of four days why execution for the above decreed amount should not issue against them, their goods; chattels and lands. 258

ADDISON BROWN. 259

Objections to form waived without prejudice to appeal.

ROGER FOSTER,
Proctor for Libellants.

Form approved.

ROBINSON BIDDLE & WARD,
Procs. for Clt.

[Endorsed :]—Final Decree.—Filed October 10, 1898. 260

261 DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LIZSIE STEARNS BLEECKER and ELSIE L. BLEECKER,

Libellants,

AGAINST

The Steamship "KENSINGTON," her boilers, engines, etc., THE INTERNATIONAL NAVIGATION COMPANY,

262 Claimant.

Sirs:

Please take notice that the libellants above named hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from so much of the final decree made herein on the 5th day of October, 1898, and entered and filed in the office of the Clerk of the District Court of the United States for the Southern

263 District of New York, the 10th day of October, 1898, which does not decree to each of the above named libellants severally damages in the sum of two thousand ($2,000) dollars, and from that part of said decree which limits the recovery of each of said libellants for damages to the sum of forty-eight and 10/100 ($48.10) dollars. And take further notice that the appellants herein do not intend to introduce new pleadings and proofs in said Circuit Court of Appeals for

264 the Second Circuit.

Dated New York, October 19th, 1898.

Yours &c.,

ROGER FOSTER,

Proctor for Libellants and Appellants,

35 Wall Street, New York.

To ROBINSON, BIDDLE & WARD,

Proctors for Claimant.

and to

The Clerk of the District Court of the United States for the Southern District of New York.

[Endorsed:] — Libellants' Notice of Appeal. — Filed Oct. 29th, 1898.

265

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In the Matter

OF

The Petition of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER.

266

ASSIGNMENT OF ERRORS.

Afterwards, to wit: on the day of October in the year of our Lord eighteen hundred and ninety-eight, at the October term for eighteen hundred and ninety-eight of the Circuit Court of Appeals of the United States for the Second Circui , in the County and State of New York, comes the said Lizzie Stearns Bleecker and Elsie L. Bleecker, by Roger Foster, their 267 attorney, and say that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

I.—The final decree is erroneous in that it does not decree payment to the above-named libellants and appellants of the sum of $4,000 with interest and costs.

II.—The final decree is erroneous in that it decrees payment to the said libellants and appellants of the sum of only $96.20 with interest and costs amounting 268 to $51.50 making in all the sum of $151.59 instead of the sum of $4,000 with interest and costs.

III.—The District Judge erroneously held that the ticket marked Claimant's Exhibit A was a contract.

IV.—The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of The International Navigation Company was binding upon the said Lizzie Stearns Bleecker and Elsie L. Bleecker.

269 V.—The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of claimant to 250 francs was a limitation which it was competent for the defendant company to make.

VI.—The District Judge erred in holding that the language in said ticket, Claimant's Exhibit A (marked "d") which purported to provide that the shipowner or agent should not be liable for injury to passengers' 270 baggage beyond the sum of 250 francs unless extra freight was paid for the same, limited the liability of the steamship *Kensington*, her boilers, engines, etc., in a Court of Admiralty for injury to such baggage.

VII.—The District Judge erred in holding that the language in said ticket, which purported to provide that the shipowner or agent should not be liable for injury to passengers' baggage beyond the sum of 250 francs, unless an extra charge was paid for the same, limited the liability of the said steamship, her boilers, 271 engines, etc., in case such liability was caused by the negligence or misconduct of the officers or crew of the said steamship who stored the said baggage in the said steamship.

VIII.—The District Judge erroneously held that the act of Congress approved on the 13th day of February, 1893, namely: Chapter 105 of the acts of the second session of the Fifty-second Congress, which is published in 27 United States Stat. at 272 Large at page 445, known as the Harter Act, did not apply to the transportation of the baggage of passengers which was not separately shipped as cargo, and for which no freight in addition to the passage money was paid.

IX.—In the testimony of the libellants' witness, Lizzie S. Bleecker, the counsel for the libellant asked the following question:

"What were the contents of those trunks, what was their value?" The counsel for the claimant objected

to the Court passing upon the question of damages, and the Court sustained the said objection and excluded the said question, to which the libellant duly excepted. The Court erred in sustaining the objection. 273

X.—In the course of the cross-examination of the libellants' witness, Lizzie S. Bleecker, the counsel for the claimant offered the passage ticket claimant's Exhibit A, in evidence, which was admitted by the Court. The counsel for the libellants objected to the admission of the ticket in evidence as irrelevant and immaterial and because the conditions therein contained are against the public policy. The Court overruled said objection and admitted said ticket in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said ticket in evidence. 274

XI.—In the course of the cross-examination of the libellants' witness, Lizzie Stearns Bleecker, the counsel for the claimant offered in evidence the baggage receipt, Claimant's Exhibit B. The counsel for the libellants' objected to the admission of the baggage receipt as irrelevant, immaterial and incompetent. The Court overruled said objection and admitted said baggage receipt in evidence, to which the libellants duly excepted. The Court erred in overruling said objection. 275

XII.—At the conclusion of the testimony, the claimant's counsel offered in evidence the deposition of Maurice de Cock. The counsel for the libellants duly moved to suppress said deposition and objected to the admission of the deposition on the grounds that the witness failed or refused to answer one of the questions put to him on his cross-examination. The Court denied the motion and admitted in evidence said deposition to each of which rulings the counsel for the libellants separately duly excepted. The Court erred in denying said motion, and in admitting said deposition in evidence. 276

XIII.—The counsel for the libellants separately and specifically objected to the admission in evidence of

277 the answer to the sixth interrogatory in said deposition upon the ground that the witness had failed or refused to answer the sixth cross-interrogatory fully as directed in said cross-interrogatory. The Court overruled said objection and admitted said answer in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said answer in evidence.

Wherefore the said Lizzie S. Bleecker and Elsie L. Bleecker pray that the said decree may be modified so
278 as to decree that the libellants be severally awarded as damages the sum of $2,000 to each of them with interest and costs in the District Court and the costs in the United States Circuit Court of Appeals.

ROGER FOSTER,
Proctor for Libellant, Appellant,
35 Wall Street, New York.

[Endorsed:]—Libellants' Assignment of Error. Filed October 29, 1898.

279

280

281

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,
Libellants,

vs.

The Steamship "KENSINGTON," her boilers, etc. INTERNATIONAL NAVIGATION COMPANY,
Claimant.

282

Please take notice, that the International Navigation Company, the claimant above named, appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above-entitled action, and filed in the office of the Clerk of the above entitled Court on the 10th day of October, 1898, and from each and every part of saie decree. 283

Dated Borough of Manhattan,
City of New York, November 1st, 1898.

Yours, etc.,
ROBINSON, BIDDLE & WARD,
Proctors for International Navigation Company,
Claimant.

To ROGER FOSTER, ESQ., 284
Proctor for Libellants,
SAMUEL H. LYMAN, ESQ.,
Clerk of the United States District Court.

[Endorsed:]—Claimant's Notice of Appeal.—Filed November 1, 1898.

285 UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

LIZZIE STEARNS BLEECKER and another,
Libellants-Appellants,

AGAINST

286 The Steamship "KENSINGTON," INTERNATIONAL NAVIGATION COMPANY,
Claimant-Appellant.

The claimant-appellant assigns error in the decision of the Court below as follows:

1st. Because the learned Judge erred in holding that the claimant was bound to give proof of good stowage.

287 2nd. Because the learned Judge erred in finding that damage to the extent of at least 250 francs as to each libellant occurred in this country.

3rd. Because the learned Judge erred in holding that the cause of action in part arose in this country.

4th. Because the learned Judge erred in holding that the exemption contained in the bill of lading from any liability on the part of the claimants for the acts, default or neglect of its servants did not protect the
288 claimant from any liability for the injury to the baggage of the libellants.

5th. Because the learned Judge erred in not dismissing the libel with costs.

6th. Because the learned Judge erred in awarding to the libellants a decree for the equivalent of 250 francs each with interest and costs.

ROBINSON, BIDDLE & WARD,
Proctors for Claimant-App't.

[Endorsed:]—Claimant's Assignment of Error.—Filed November 81, 1898.

289

UNITED STATES OF AMERICA,
Southern District of New York. } ss. :

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,
Libellants and Appellants,

vs.

The Steamship "KENSINGTON," her boilers, engines, etc., THE INTERNATIONAL NAVIGATION COMPANY,
Claimant and Appellant.

290

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify, that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause made up pursuant to 291
Rule No. 4 in Admiralty of the United States Circuit Court of Appeals, for the Second Circuit.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York,
[SEAL.] this 13th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the independence of the said United 292
States the one hundred and twenty-third.

SAML. H. LYMAN,
Clerk.

United States Int. Revenue Stamp. Cancelled.

73a

293

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify, that the writings annexed to this certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

294

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 30th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

[STAMP.]

295

SAMUEL H. LYMAN,
Clerk.

[SEAL.]

296

73a

297

At a Stated Term of the United States District Court held at the United States Court Building in the City of New York, for the Southern District of New York, on the day of April, 1898.

Present—Hon. ADDISON BROWN, Justice.

298

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER

AGAINST

The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY.

299

The libellants above named having moved for leave to amend their libel herein, after hearing Roger Foster, Esquire, proctor for libellants in support of said motion, and Messrs. Robinson, Biddle & Ward, proctors for claimant in opposition thereto, it is hereby

Ordered, that said motion be and the same hereby is granted by striking from the paragraph designated as second in the libel herein, after the words "with the libellants," and before the words "and thereby," the following words: "Embraced in a passage ticket then
300 duly delivered by them to said libellants," so that said paragraph second shall read as follows: "Second: Heretofore, and on or about the 9th day of December, 1897, the said The International Navigation Company entered into a contract with the libellants, and thereby, for a valuable consideration to them paid by the libellants, agreed to and with the libellants to carry and transport the libellants from the port of Antwerp in the Kingdom of Belgium to the port of New York in the United States of America by the said steamship *Kensington*, and by said steamship to carry and transport with safety to said

port of New York, and there deliver to the libellants, 301
in good order and condition, the personal luggage or baggage of the libellants."

And it is further

Ordered, that the original libel heretofore filed and the answer to the same heretofore filed by the claimant, The International Navigation Company, remain as the pleadings in this case with said amendment without the service or filing of any new or amended pleadings herein, unless the claimant may desire to file a new answer in which case it may do so within twenty (20) days from 302
the date of the entry of this order.

Objections to form waived.

New York, April 12, 1898.

ADDISON BROWN.

ROBINSON, BIDDLE & WARD,
Procs. for Claimant.

ROGER FOSTER,
Proctor for Libellants.

[Endorsed:]—Order amending Libel. 303

304

73 C

Circuit Court of Appeals,

FOR THE SECOND CIRCUIT.

No. 147.—October Term, 1898. Submitted April 21, 1899. Decided May 25, 1899.

Appeal from the District Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe and Shipman. 306

Lizzie Stearns Bleecker and Elsie L. Bleecker

against

The Steamship "Kensington," her Boilers, Engines, &c., The International Navigation Company.

These are cross appeals from a decree of the District Court, Southern District of New York, 307 holding the libellants entitled to recover the equivalent of 250 francs apiece. The facts sufficiently appear in the opinion:

"Lacombe, Circuit Judge: On December 2, 1897, "the libellants, citizens of the United States and "residents of New Jersey, being at the time in "Paris, France, purchased of an agent of the "claimant, a New Jersey corporation, a ticket for "their passage from Antwerp to New York by the "British steamer Kensington, of the Red Star "Line. They proceeded to Antwerp, where on "December 10th they paid the balance of the pur-

308 "chase money, delivered their trunks to the vessel "and received a baggage check, stating that said "trunks were shipped 'subject to the conditions "contained in the company's ticket and bill of "lading.' The ticket, which is dated December 2, "1897, begins with a recital of the names of the "passengers and numbers of state-rooms and "berths, and states that it 'is good for second- "cabin passage of the persons named in the mar- "gin * * * by the British steamship Kensing- "ton from Antwerp on the 11th of December, "* * * unless prevented from unforeseen cir- "cumstances, with 20 cubic feet of personal bag-
309 "gage for each adult passenger free of charge, "excess being charged for at the rate of 125 francs "per cubic foot.' Immediately succeeding is the "caption, 'Notice to Passengers,' and these words, "'It is a condition upon which this ticket "is granted, and it is mutually agreed for the "consideration aforesaid, that—' Here, as the "District Judge finds, follows 10 paragraphs in "type somewhat smaller than the preceding type, "but perfectly clear and legible, stating numerous "conditions. The whole concludes with the clause: "'All questions arising hereunder are to be settled "according to Belgian law, with reference to which "this contract is made.' Then follows the signa-
310 "ture, 'John Macklin, for General European "Agents, The relevant conditions included in the "above-mentioned 10 paragraphs are these: '(c) "The shipowner or agent are not under any cir- "cumstances liable for loss, death, injury or delay "to the passenger or his baggage arising from the "act of God, the public enemies, fire, robbers, "thieves of whatever kind, whether on board the "steamer or not, perils of the seas, rivers, or navi- "gation, accidents to or of machinery, boilers, or "steam, collisions, strikes, arrest or restraint of "princes, courts of law, rulers, or people, or from "any act, neglect, or default of the shipowners'

"servants, whether on board the steamer or not, or 311
"on board any other vessel belonging to the ship-
"owner. * * * The shipowner will use all rea-
"sonable means to send the steamer to sea in a
"seaworthy state and well found, but does not
"warrant her seaworthiness. (*d*) The shipowner or
"agent shall not under any circumstances be liable
"for any loss or delay of or injury to passengers'
"baggage carried under this ticket beyond the sum
"of 250 francs, at which such baggage is hereby
"valued, unless a bill of lading or receipt be given
"therefor, and freight paid in advance on the ex-
"cess value at the rate of one per cent., or its
"equivalent, in which case the shipowner shall 312
"only be responsible according to the terms of the
"shipowner's form of cargo bill of lading in use
"from the port of departure."

"When their baggage was delivered to the com-
"pany at Antwerp on December 10th, no state-
"ment was made of its value, and no freight was
"paid on its excess over 250 francs. The trunks
"were stowed in the after part of what is known as
" 'No. 2, Upper Steerage Deck.' Upon the arrival
"of the steamer in New York it was discovered
"that the libellants' trunks and baggage of other
"passengers which, with some crates of china, had
"been stowed there had been broken to pieces, and
"the contents of the trunks destroyed by water, 313
"dye and dirt."

"1. The first contention of the claimant upon
"this appeal is that the District Judge erred in
"holding that the claimant was bound to give proof
"of good stowage. There was evidence that the
"voyage was one of exceptional roughness; that
"on December 20th the steamer labored so heavily
"that she had to heave to for 14 or 15 hours, which
"had not previously occurred in the master's ex-
"perience of 23 years; that she is a steamer of over
"8,000 tons gross register, from 14 to 15 knots

"speed, and accustomed to make the trip in 10
"days, but on the voyage in question she took 12
"days; that the clinometer indicated that she
"rolled from 38 to 45 degrees either side. Upon
"these facts it is insisted that enough appears to
"show that the loss occurred by a peril of the sea,
"and that in this stage and posture of the case the
"burden was upon the plaintiffs to establish neg-
"ligence of some kind on the part of the ship. In
"support of this contention, counsel cites: Clark
"vs. Barnwell, 12 How., 272; The Victory, 168
"U. S., 423; 18 Sup. Ct., 149; The Neptune, 6
"Blatchf., 193; Fed. Cas., No. 10,118. There was
315 "evidence, however, given by one of the libellants'
"witnesses, who was present when the hatch was
"removed, that he descended immediately, and
"that, although he examined carefully, he could
"find no indications that the contents of No. 2
"upper steerage had been lashed or otherwise se-
"cured against movement in rough weather. It is
"true that at the time of his examination the con-
"tents of the compartment were in such a chaotic
"state that the inferences to be drawn from his
"failure to discover any evidence of lashing down
"are not particularly strong; but, in the absence
"of any testimony whatever on the part of the
"ship as to how such contents were stowed and se-
316 "cured against the movements incidental to rough
"weather (the compartment was not filled), the
"evidence is sufficient to support the libellants'
"contention."

"2. The claimant further contends that it should
"have the benefit of the provision in the contract
"of carriage exempting it from liability for the
"act, neglect or default of its servants; such stip-
"ulation being authorized by the Belgian law. In
"reply it is sufficient to refer to Worsted Mills
"v. Knott, 27 C. C. A., 326; 82 Fed., 471, in which
"a majority of this Court held that such a stipu-

"lation, being against the public policy of this 317
"country, was not enforceable by its Courts. We
"are unanimous in the opinion that it cannot be
"enforced where both parties to the contract are
"citizens of the United States, and the place of
"completion of the contract is within this country.
"We concur also in the conclusion of the district
"Judge that the provisions of the second section of
"the Harter Act as to bills of lading and shipping
"documents do not apply to passenger tickets."

"3. The main contention of the libellants is that
"the stipulation in the ticket against liability for
"injury to baggage in excess of the stated value of
"250 francs is void, either because it did not amount 318
"to a contract, or because it is contrary to public
"policy, or because the sum named (250 francs)
"is unreasonably small. The same question was
"discussed by this Court in the Majestic, 9 C. C.
"A., 161; 60 Fed., 624. That decision was re-
"versed by the Supreme Court (The Majestic, 166
"U. S., 375; 17 Sup. Ct., 597) on the ground that
"the conditions or limitations relied upon in that
"case 'were not included in the contract proper, in
"terms or by reference;' being printed on the back
"without any reference in the contract to such in-
"dorsement. In the case at bar, however, the
"clause relied upon is plainly included in the con- 319
"tract itself, above the signature of the ship's
"agent; and the reasoning of the opinion of this
"Court in the Majestic, *supra*, applies. However
"unreasonable would be a 'condition' attempting
"to relieve the carrier entirely from liability in ex-
"cess of some named amount, there seems to be no
"impropriety in the carrier's requiring the passen-
"ger to declare the value of his baggage in excess
"of such named amount, to take regular bill of
"lading therefor, and to pay for its transportation
"in proportion to its value, with the proviso that,
"if he fails so to do, the carrier shall not be liable.

320 "As to the question whether the sum named (250
"francs) is too small, the Supreme Court, in the
"Majestic, *supra*, intimated some doubt as to the
"reasonableness of £10 in the case of a first cabin
"passenger's baggage, but rendered no decision
"thereon. In view of the circumstance that the
"condition complained of contained an offer to
"carry the excess value under a regular bill of
"lading, we are not prepared, in the absence of
"authority, to hold that 250 francs is an unreason-
"able valuation for personal baggage of a second
"cabin passenger not thus carried."

"The proposition contended for, that the clause
321 "in question provides only for the relief of the
"'shipowner or agent,' and does not inure to the
"benefit of the ship itself, which in this suit is
"called upon to respond only because, as is al-
"leged, the owner did not fully carry out its con-
"tract, seems to be without merit. The decree of
"the District Court is affirmed, but, since both
"sides appealed, without interests or costs."

ROGER FOSTER,
For the Libellants.

H. GALBRAITH WARD,
For the Claimant.

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At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the city of New York, on the 6th day of June, one thousand eight hundred and ninety-nine. 323

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

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LIZZIE S. BLEECKER, *et. al.*,
Libellants-Appellants,

vs.

THE STEAMSHIP "KENSINGTON," her engines, etc., International Navigation Company,
Claimant-Appellant.

Appeals from the District Court of the United States for the Southern District of New York.

This cause came to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by Counsel. 325

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed, without interest or costs.

E. H. L. It is further ordered that a mandate issue to the said District Court in accordance with this decree.

326 United States of America, Southern District of New York, } ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify, that the foregoing pages, numbered from 1 to 80 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Lizzie S. Bleecker, *et. al.*, libellants-appellants against S. S. "Kensington;" International Navigation Company, claimant-appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of
327 the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of September, in the year of our Lord One thousand eight hundred and ninety-nine, and of Independence of the said United States the one hundred and seventy-fourth.

WM. PARKIN,
Clerk.

[SEAL.]

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UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which Lizzie Stearns Bleecker and Elsie L. Bleecker and The Steamship "Kensington," her engines, &c., The International Navigation Company, claimant, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 414, October term, 1899. Lizzie Stearns Bleecker & Elsie L. Bleecker *vs.* The Steamship "Kensington," &c. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Nov. 3, 1899. William Parkin, clerk.

Supreme Court of the United States.

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER
against
THE STEAMSHIP "KENSINGTON," HER ENGINES, &c.; The International Navigation Company, Claimant. } No. 414.

We hereby stipulate that the certified copy of the transcript of record filed in the Supreme Court of the United States, with the petition for a writ of certiorari, may be taken as and shall be the return to the writ of certiorari granted herein by said Supreme Court of the United States to the United States circuit court of appeals for the second circuit on the 30th day of October, 1899.

Dated New York, November 2nd, 1899.

ROGER FOSTER,
Attorney and Proctor for the Bleeckers, Libellants and Appellants.

H. G. WARD,
Proctor for Claimant.

To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause wherein mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and, under the direction of counsel for the appellant, said stipulation is certified as a return to this writ.

New York, November 3, 1899.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals
for the Second Circuit.

[10-cent U. S. internal-revenue stamp, canceled 11, 3, '99. W. P., cl'k.]

[Endorsed:] United States circuit court of appeals, second circuit. Lizzie S. Bleecker *v.* S. S. "Kensington." Return to writ of certiorari.

[Endorsed:] File No., 17,528. Supreme Court U. S., October term, 1899. Term No., 414. Lizzie Stearns Bleecker *et al.*, petitioners, *vs.* The Steamship Kensington, &c. Writ of certiorari and return. Filed Nov. 6, 1899.